

NORTHERN DISTRICT OF CALIFORNIA

CIARA NEWTON,

PLAINTIFF,

VS.

EQUILON ENTERPRISES LLC DBA  
SHELL OIL PRODUCTS,

DEFENDANT.

NO. C-17-3961 YGR

WEDNESDAY, DECEMBER 19, 2018

OAKLAND, CALIFORNIA

JURY TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**APPEARANCES :**

**FOR PLAINTIFF:**

MINNIS & SMALLETS LLP  
369 PINE STREET, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94104

BY: SONYA L. SMALLETS, ESQUIRE  
EVEN R. ETHINGHOFF, ESQUIRE

DICKSON GEESMAN LLP  
1999 HARRISON STREET, SUITE 1945  
OAKLAND, CALIFORNIA 94612

BY: EMILY A. NUGENT, ESQUIRE

**FOR DEFENDANT:**

LAFAYETTE & KUMAGAI LLP  
1300 CLAY STREET, SUITE 810  
OAKLAND, CALIFORNIA 94612

BY: GARY T. LAFAYETTE, ESQUIRE  
BARBARA L. LYONS, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1 WEDNESDAY, DECEMBER 19, 2018

12:30 P.M.

2 P R O C E E D I N G S

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

4 **THE COURT:** GOOD AFTERNOON, EVERYONE.

5 **MR. LAFAYETTE:** GOOD AFTERNOON.

6 **MS. NUGENT:** GOOD AFTERNOON.

7 **THE COURT:** WE HAVE A VERDICT FROM THE JURY.

8 I THOUGHT THAT BEFORE I CALLED THEM IN I WOULD LET YOU  
9 KNOW THAT I SEE THAT THERE ARE THINGS THAT WERE FILED ON THE  
10 DOCKET WITH RESPECT TO PUNITIVES LIABILITY.

11 AS I INDICATED BEFORE, I'M GOING TO -- I DON'T KNOW WHAT  
12 THE VERDICT IS, BUT TO THE EXTENT THAT A PUNITIVES FINDING IS  
13 POSSIBLE, I AM GOING TO INSTRUCT THE JURY AS SUCH. IF I NEED  
14 TO DEAL WITH IT POST-TRIAL, I WILL DO SO. BUT I'M NOT GOING  
15 TO WASTE THE OPPORTUNITY TO HAVE THE JURY WEIGH IN ON THAT  
16 QUESTION.

17 I UNDERSTAND THAT IT LOOKS LIKE THE PLAINTIFFS JUST FILED  
18 SOMETHING. I HAVEN'T EVEN HAD A CHANCE TO READ IT. I JUST  
19 RECEIVED A COURTESY COPY. SO, WE'RE GOING TO MOVE FORWARD.

20 ALL RIGHT. CALL THE JURY IN.

21 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

22 **THE CLERK:** ALL RISE. YOU MAY BE SEATED.

23 **THE COURT:** GOOD AFTERNOON. WE ARE BACK ON THE  
24 RECORD. THE RECORD WILL REFLECT THE JURY IS WITH US.

25 FOREPERSON, NO. 2, RIGHT? I UNDERSTAND YOU HAVE A

1 UNANIMOUS VERDICT.

2 **JUROR:** WE DO, YOUR HONOR.

3 **THE COURT:** OKAY. HAND THIS TO THE COURTROOM DEPUTY  
4 TO READ.

5 **THE CLERK:** LADIES AND GENTLEMEN OF THE JURY, YOU  
6 WILL LISTEN TO THE VERDICT -- I'M SORRY, YOU WILL LISTEN TO  
7 THE READING OF THE VERDICT.

8 WE ARE CALLING C-17-3961 CIARA NEWTON VERSUS EQUILON  
9 ENTERPRISES, LLC, DOING BUSINESS AS SHELL OIL PRODUCTS U.S.

10 WE, THE JURY, IN THE ABOVE-ENTITLED CASE, UNANIMOUSLY  
11 RENDER THE FOLLOWING VERDICTS:

12 QUESTION NO. 1. DID CIARA NEWTON ESTABLISH HER FIRST  
13 CLAIM FOR HARASSMENT BASED ON GENDER BY A PREPONDERANCE OF THE  
14 EVIDENCE? YES.

15 QUESTION NO. 2. DID CIARA NEWTON ESTABLISH HER SECOND  
16 CLAIM OF GENDER DISCRIMINATION BY A PREPONDERANCE OF THE  
17 EVIDENCE? NO.

18 QUESTION NO. 3. DID CIARA NEWTON ESTABLISH HER THIRD  
19 CLAIM OF FEHA RETALIATION BY A PREPONDERANCE OF THE EVIDENCE?  
20 NO.

21 IF YOU ANSWERED "NO" TO ALL THE QUESTIONS 1, 2 AND 3,  
22 PLEASE PROCEED TO QUESTION 5.

23 IF YOU ANSWERED "YES" TO ANY OF QUESTIONS 1, 2 OR 3,  
24 PLEASE ANSWER QUESTION 4.

25 QUESTION 4. DID CIARA NEWTON ESTABLISH HER FOURTH CLAIM

1 FOR FAILURE TO PREVENT HARASSMENT DISCRIMINATION OR  
2 RETALIATION BY A PREPONDERANCE OF THE EVIDENCE? YES.

3 YOUR HONOR, THEY ALSO DID ANSWER 5.

4 **THE COURT:** THAT WOULD BE APPROPRIATE.

5 **THE CLERK:** DID CIARA NEWTON ESTABLISH HER FIFTH  
6 CLAIM OF WHISTLEBLOWER RETALIATION BY A PREPONDERANCE OF THE  
7 EVIDENCE AND DEFENDANT FAILED TO ESTABLISH BY CLEAR AND  
8 CONVINCING EVIDENCE THAT IT WOULD HAVE TERMINATED CIARA NEWTON  
9 ANYWAY AT THAT TIME FOR LAWFUL INDEPENDENT REASONS? NO.

10 PLEASE SIGN AND DATE BELOW AND GIVE THIS VERDICT FORM TO  
11 THE CLERK. IT'S DATED DECEMBER 19TH, 2018, FOREPERSON JUROR  
12 NO. 2.

13 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, ARE THE  
14 VERDICTS AS JUST READ YOUR TRUE AND CORRECT, VERDICTS?

15 **JURORS:** YES.

16 **THE COURT:** COUNSEL, DO YOU WANT THE JURY POLLED?

17 **MR. LAFAYETTE:** YES, YOUR HONOR.

18 **MS. NUGENT:** YES, YOUR HONOR.

19 **THE COURT:** IF THE COURTROOM DEPUTY WILL POLL THE  
20 JURY.

21 **THE CLERK:** YES, YOUR HONOR.

22 JUROR NO. 1, FRANK LUNA, WHAT IS YOUR VERDICT?

23 **JUROR NO. 1:** YES.

24 **THE CLERK:** JOSHUA THELIN, JUROR NO. 2, WHAT IS YOUR  
25 VERDICT?

1 I'M SORRY.

2 JUROR NO. 2: YES.

3 THE COURT: LET ME ASK IT SEPARATELY. WE'LL ASK IT A  
4 SLIGHTLY DIFFERENT WAY.

5 JUROR NO. 2: I'M SORRY, WITH REGARD TO CLAIM 1?

6 THE COURT: LET ME ASK THIS QUESTION: AS I CALL YOUR  
7 JUROR NUMBER, PLEASE INDICATE BY SAYING "YES" OR "NO" IF THE  
8 VERDICTS AS WE JUST READ THEM ARE YOUR TRUE AND INDIVIDUAL  
9 VERDICTS.

10 JUROR NO. 1?

11 JUROR NO. 1: YES.

12 THE COURT: JUROR NO. 2?

13 JUROR NO. 2: YES.

14 THE COURT: JUROR NO. 3?

15 JUROR NO. 3: YES.

16 THE COURT: JUROR NO. 4?

17 JUROR NO. 4: YES.

18 THE COURT: JUROR NO. 5?

19 JUROR NO. 5: YES.

20 THE COURT: JUROR NO. 6?

21 JUROR NO. 6: YES.

22 THE COURT: JUROR NO. 7?

23 JUROR NO. 7: YES.

24 THE COURT: JUROR NO. 8?

25 JUROR NO. 8: YES.

1           **THE COURT:** ALL RIGHT. THE JURY HAS BEEN POLLED AND  
2 I FIND THE VOTE IS UNANIMOUSLY AFFIRMED. THE DEPUTY CLERK CAN  
3 RECORD THE VERDICTS.

4           **THE CLERK:** YOUR HONOR, THE VERDICTS ARE RECORDED.

5           **THE COURT:** IF YOU WILL FILE STAMP IT FOR ME.  
6 ANYBODY WANT THEM REREAD NOW THAT WE HAVE RECORDED THE  
7 ORIGINAL?

8           **MS. NUGENT:** NO, YOUR HONOR.

9           **THE COURT:** MR. LAFAYETTE?

10          **MR. LAFAYETTE:** NO, YOUR HONOR.

11          **THE COURT:** OKAY. ALL RIGHT.

12           NOW, I HAVE MORE INSTRUCTIONS FOR YOU. BECAUSE I DIDN'T  
13 KNOW WHAT YOUR VERDICT WAS GOING TO BE, I DON'T HAVE COPIES  
14 FOR YOU, BUT I WILL SEND COPIES IN. OKAY?

15           I'M GOING TO GIVE YOU SOME INSTRUCTIONS. I'M GOING TO LET  
16 THE PARTIES DO A SHORT ARGUMENT WITH RESPECT TO WHAT I'M GOING  
17 TO INSTRUCT YOU ON, AND THEN YOU'LL GO BACK IN AND DELIBERATE  
18 SOME MORE.

19           SO NOW THAT YOU HAVE DECIDED THAT CIARA NEWTON HAS PROVED  
20 AT LEAST ONE CLAIM AGAINST DEFENDANT EQUILON ENTERPRISES DOING  
21 BUSINESS AS SHELL OIL PRODUCTS U.S., YOU MUST DECIDE HOW MUCH  
22 MONEY WILL REASONABLY COMPENSATE CIARA NEWTON FOR HER HARM.  
23 THIS COMPENSATION IS CALLED DAMAGES.

24           THE AMOUNT OF DAMAGES MUST INCLUDE AN AWARD FOR EACH ITEM  
25 OF HARM THAT WAS CAUSED BY DEFENDANT'S WRONGFUL CONDUCT, EVEN

1 IF THE PARTICULAR HARM COULD NOT HAVE BEEN ANTICIPATED.

2 CIARA NEWTON DOES NOT HAVE TO PROVE THE EXACT AMOUNT OF  
3 DAMAGES THAT WILL PROVIDE REASONABLE COMPENSATION FOR THE  
4 HARM. HOWEVER, YOU MUST NOT SPECULATE OR GUESS IN AWARDING  
5 DAMAGES.

6 THE ARGUMENTS OF THE ATTORNEYS ARE NOT EVIDENCE OF  
7 DAMAGES. YOUR AWARD MUST BE BASED ON YOUR REASONED JUDGMENT  
8 APPLIED TO THE TESTIMONY OF THE WITNESSES AND THE OTHER  
9 EVIDENCE THAT HAS BEEN ADMITTED DURING TRIAL.

10 FURTHER, YOU MUST NOT CONSIDER OR INCLUDE AS ANY PART OF  
11 ANY AWARD ATTORNEYS' FEES OR EXPENSES THAT THE PARTIES  
12 INCURRED IN BRINGING OR DEFENDING THE LAWSUIT.

13 CIARA NEWTON SEEKS DAMAGES FROM THE DEFENDANT UNDER MORE  
14 THAN ONE LEGAL THEORY. HOWEVER, EACH ITEM OF DAMAGES MAY BE  
15 AWARDED ONLY ONCE, EVEN IF PLAINTIFF HAS PROVED LIABILITY ON  
16 MORE THAN ONE LEGAL THEORY.

17 THE FOLLOWING ITEMS OF DAMAGES ARE RECOVERABLE ONLY ONCE.  
18 ONE, PAST LOST EARNINGS, TWO, FUTURE LOST EARNINGS AND, THREE,  
19 PAST AND FUTURE MENTAL SUFFERING AND EMOTIONAL DISTRESS.

20 CIARA NEWTON SEEKS RECOVERY OF ALL THREE ITEMS OF DAMAGES.

21 SO, FIRST, TO RECOVER DAMAGES FOR PAST LOST EARNINGS,  
22 CIARA NEWTON MUST PROVE THE AMOUNT OF INCOME, EARNINGS,  
23 SALARY, WAGES, AND/OR BENEFITS THAT SHE HAS LOST TO DATE.

24 TWO, TO RECOVER DAMAGES FOR FUTURE LOST EARNINGS, CIARA  
25 NEWTON MUST PROVE THE AMOUNT OF INCOME, EARNING, SALARY,



1 WAGES, AND/OR BENEFITS SHE WILL REASONABLY -- SHE WILL BE  
2 REASONABLY CERTAIN TO LOSE IN THE FUTURE AS A RESULT OF  
3 DEFENDANT EQUILON ENTERPRISE'S ACTIONS.

4 IF YOU DECIDE THAT CIARA NEWTON'S HARM INCLUDES FUTURE  
5 LOST EARNINGS, THEN THE AMOUNT OF THOSE EARNINGS -- AMOUNT OF  
6 THOSE FUTURE LOST EARNINGS MUST BE REDUCED TO THEIR PRESENT  
7 CASH VALUE. THIS IS NECESSARY BECAUSE MONEY RECEIVED NOW  
8 WILL, THROUGH INVESTMENT, GROW TO A LARGER AMOUNT IN THE  
9 FUTURE.

10 DEFENDANT MUST PROVE THE AMOUNT BY WHICH LOST EARNINGS  
11 SHOULD BE REDUCED TO PRESENT VALUE. TO PRESENT -- TO FIND  
12 PRESENT CASH VALUE, YOU MUST DETERMINE THE AMOUNT OF MONEY  
13 THAT, IF REASONABLY INVESTED TODAY, WILL PROVIDE CIARA NEWTON  
14 WITH THE AMOUNT OF HER FUTURE LOST EARNINGS.

15 YOU MAY CONSIDER EXPERT TESTIMONY IN DETERMINING THE  
16 PRESENT CASH VALUE OF FUTURE LOST EARNINGS.

17 LAST, NUMBER THREE. TO RECOVER DAMAGES FOR PAST AND  
18 FUTURE MENTAL SUFFERING AND EMOTIONAL DISTRESS, NO FIXED  
19 STANDARD EXISTS TO DECIDE THE AMOUNT. YOU MUST USE YOUR  
20 JUDGMENT TO DECIDE A REASONABLE AMOUNT BASED ON THE EVIDENCE  
21 AND YOUR COMMON SENSE.

22 TO RECOVER FOR FUTURE MENTAL SUFFERING OR EMOTIONAL  
23 DISTRESS, CIARA NEWTON MUST PROVE THAT SHE IS REASONABLY  
24 CERTAIN TO SUFFER THAT FUTURE HARM.

25 FOR FUTURE MENTAL SUFFERING OR EMOTIONAL DISTRESS,

1 DETERMINE THE AMOUNT IN CURRENT DOLLARS PAID AT THE TIME OF  
2 THE JUDGMENT THAT WILL COMPENSATE HER FOR FUTURE MENTAL  
3 SUFFERING OR EMOTIONAL DISTRESS. THE AMOUNT OF FUTURE MENTAL  
4 SUFFERING OR EMOTIONAL DISTRESS DAMAGES SHOULD NOT BE FURTHER  
5 REDUCED TO PRESENT CASH VALUE.

6 WITH RESPECT TO HER FIRST CLAIM IN WHICH YOU FOUND IN  
7 FAVOR OF HER, THE FOLLOWING INSTRUCTION APPLIES. AND, AGAIN,  
8 YOU WILL HAVE ALL THIS IN WRITING INSIDE THE JURY ROOM.

9 IF CIARA NEWTON PROVES, AS YOU HAVE FOUND, THAT A  
10 SUPERVISOR HARASSED HER BASED ON HER GENDER, DEFENDANT EQUILON  
11 ENTERPRISES IS RESPONSIBLE FOR HARM TO CIARA NEWTON CAUSED BY  
12 THAT HARASSMENT.

13 HOWEVER, DEFENDANT CLAIMS THAT CIARA NEWTON COULD HAVE  
14 AVOIDED SOME OR ALL OF THE HARM WITH REASONABLE EFFORT. TO  
15 SUCCEED, DEFENDANT EQUILON ENTERPRISES MUST PROVE ALL OF THE  
16 FOLLOWING:

17 ONE, THAT THE DEFENDANT TOOK REASONABLE STEPS TO PREVENT  
18 AND CORRECT WORKPLACE GENDER HARASSMENT, TWO, THAT CIARA  
19 NEWTON UNREASONABLY FAILED TO USE THE PREVENTIVE AND  
20 CORRECTIVE MEASURES FOR GENDER HARASSMENT THAT DEFENDANT  
21 PROVIDED AND, THREE, THAT THE REASONABLE USE OF DEFENDANT'S  
22 PROCEDURES WOULD HAVE PREVENTED SOME OR ALL OF CIARA NEWTON'S  
23 HARM.

24 YOU SHOULD CONSIDER THE REASONABLENESS OF CIARA NEWTON'S  
25 ACTIONS IN LIGHT OF THE CIRCUMSTANCES FACING HER AT THE TIME,

1 INCLUDING HER ABILITY TO REPORT THE CONDUCT WITHOUT FACING  
2 UNDUE RISK, EXPENSE, OR HUMILIATION.

3 THIS INSTRUCTION, THIS NEXT ONE, APPLIES TO HER FOURTH  
4 CLAIM IN WHICH YOU FOUND IN HER FAVOR.

5 DEFENDANT EQUILON CLAIMS THAT IF CIARA NEWTON IS ENTITLED  
6 TO DAMAGES, THE DAMAGES SHOULD BE REDUCED BY THE AMOUNT THAT  
7 SHE COULD HAVE EARNED FROM OTHER EMPLOYMENT. TO SUCCEED,  
8 DEFENDANT MUST PROVE ALL OF THE FOLLOWING:

9 ONE, THAT EMPLOYMENT SUBSTANTIALLY SIMILAR TO CIARA  
10 NEWTON'S FORMER JOB WAS AVAILABLE TO HER, TWO, THAT CIARA  
11 NEWTON FAILED TO MAKE REASONABLE EFFORTS TO SEEK THIS  
12 EMPLOYMENT AND, THREE, THE AMOUNT THAT CIARA NEWTON COULD HAVE  
13 EARNED FROM THIS EMPLOYMENT.

14 IN DECIDING WHETHER THE EMPLOYMENT WAS SUBSTANTIALLY  
15 SIMILAR, YOU SHOULD CONSIDER, AMONG OTHER FACTORS, WHETHER, A,  
16 THE NATURE OF THE WORK WAS DIFFERENT FROM CIARA NEWTON'S  
17 EMPLOYMENT WITH THE DEFENDANT, B, THE NEW POSITION WAS  
18 SUBSTANTIALLY INFERIOR TO HER FORMER POSITION, C, THE SALARY,  
19 BENEFITS, AND HOURS OF THE JOB WERE SIMILAR TO HER FORMER JOB,  
20 D, THE NEW POSITION REQUIRED SIMILAR SKILLS, BACKGROUND, AND  
21 EXPERIENCE, E, THE JOB RESPONSIBILITIES WERE SIMILAR AND, F,  
22 THE JOB WAS IN THE SAME LOCALITY.

23 NOW THAT YOU HAVE DECIDED THAT THE DEFENDANT'S CONDUCT  
24 CAUSED CIARA NEWTON HARM, YOU MUST ALSO DECIDE WHETHER CIARA  
25 NEWTON HAS PROVED THAT THE DEFENDANT, AS AN EMPLOYER, IS

1 GUILTY OF MALICE, FRAUD, OR OPPRESSION BASED UPON THE CONDUCT  
2 OF ONE OR MORE OF ITS EMPLOYEES.

3 YOU MAY FIND AN EMPLOYER GUILTY OF OPPRESSION, MALICE, OR  
4 FRAUD BASED UPON CONDUCT OF AN EMPLOYEE, BUT ONLY IF, YOU FIND  
5 BY CLEAR AND CONVINCING EVIDENCE THAT, ONE, THE CONDUCT OF THE  
6 EMPLOYEE WAS DONE WITH OPPRESSION, MALICE, OR FRAUD AND, TWO,  
7 THE EMPLOYER AUTHORIZED OR RATIFIED THE CONDUCT FOUND TO BE  
8 OPPRESSION, MALICE, OR FRAUD.

9 WHEN THE EMPLOYER IS A CORPORATION, THE AUTHORIZATION OR  
10 RATIFICATION MUST BE DONE BY AN OFFICER, DIRECTOR, OR MANAGING  
11 AGENT OF THE CORPORATION.

12 FOR PURPOSES OF THIS INSTRUCTION, THE FOLLOWING  
13 DEFINITIONS APPLY:

14 THE TERM "MANAGING AGENT" INCLUDES ONLY THOSE CORPORATE  
15 EMPLOYEES WHO EXERCISE SUBSTANTIAL INDEPENDENT AUTHORITY AND  
16 JUDGMENT IN THEIR CORPORATE DECISION MAKING SO THAT THEIR  
17 DECISIONS ULTIMATELY DETERMINE CORPORATE POLICY. THE ABILITY  
18 TO HIRE AND FIRE EMPLOYEES IS NOT IN AND OF ITSELF SUFFICIENT.  
19 CORPORATE LIABILITY FOR PUNITIVE DAMAGES DOES NOT DEPEND UPON  
20 AN EMPLOYEE'S MANAGERIAL LEVEL, BUT ON THE EXTENT TO WHICH  
21 THAT EMPLOYEE EXERCISES SUBSTANTIAL DISCRETIONARY AUTHORITY  
22 OVER DECISIONS THAT ULTIMATELY DETERMINE CORPORATE POLICY.

23 IN THIS CASE, PLAINTIFF ARGUES THAT MICHAEL BECK WAS A  
24 MANAGING AGENT OF DEFENDANT. IN APPLYING THESE INSTRUCTIONS,  
25 YOU SHOULD EVALUATE WHETHER THAT PERSON WAS A MANAGING AGENT.

1 "RATIFICATION" IS -- OR MEANS THE CONFIRMATION AND  
2 ACCEPTANCE OF A PREVIOUS ACT. A CORPORATION CANNOT AFFIRM --  
3 CONFIRM AND ACCEPT THAT WHICH IT DOES NOT ACTUALLY KNOW ABOUT.  
4 IN ORDER TO ESTABLISH RATIFICATION, PLAINTIFF MUST PROVE THAT  
5 AN OFFICER, DIRECTOR, OR MANAGING AGENT HAD ACTUAL KNOWLEDGE  
6 OF THE MALICIOUS CONDUCT AND ITS OUTRAGEOUS CHARACTER.

7 NEXT, "MALICE" MEANS CONDUCT DONE WITH THE INTENT TO CAUSE  
8 INJURY OR CONDUCT THAT WAS DESPICABLE AND DONE WITH A WILLFUL  
9 AND KNOWING DISREGARD OF THE RIGHTS OR SAFETY OF CIARA NEWTON.  
10 A PERSON ACTS WITH KNOWING DISREGARD WHEN HE OR SHE IS AWARE  
11 OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS OR HER CONDUCT  
12 AND DELIBERATELY FAILS TO AVOID THOSE CONSEQUENCES.

13 NEXT, "OPPRESSION" MEANS CONDUCT THAT WAS DESPICABLE AND  
14 SUBJECTED CIARA NEWTON TO CRUEL AND UNJUST HARDSHIP IN KNOWING  
15 DISREGARD OF HER RIGHTS.

16 NEXT, FRAUD. "FRAUD" MEANS INTENTIONALLY MISREPRESENTING  
17 OR CONCEALING A MATERIAL FACT AND DOING SO WITH THE INTENT TO  
18 HARM CIARA NEWTON.

19 NEXT, DESPICABLE. "DESPICABLE CONDUCT" MEANS CONDUCT THAT  
20 IS SO VILE, BASE, OR CONTEMPTIBLE THAT IT WOULD BE LOOKED DOWN  
21 ON AND DESPISED BY REASONABLE PEOPLE.

22 PROOF BY CLEAR AND CONVINCING EVIDENCE MEANS THAT  
23 PLAINTIFF MUST PRESENT EVIDENCE THAT LEAVES YOU WITH A FIRM  
24 BELIEF OR CONVICTION THAT IT IS HIGHLY PROBABLE THAT THE  
25 FACTUAL CONTENTIONS OF THE CLAIM ARE TRUE. THIS IS A HIGHER

1 STANDARD OF PROOF THAN PROOF BY A PREPONDERANCE EVIDENCE, BUT  
2 IT DOES NOT REQUIRE PROOF BEYOND A REASONABLE DOUBT.

3 ALL RIGHT. I'M GOING TO ALLOW THE ATTORNEYS TO MAKE SOME  
4 ARGUMENT WITH RESPECT TO THESE PHASE OF QUESTIONS. IT WILL  
5 NOT BE TOO LONG SINCE IT'S LIMITED IN SCOPE.

6 **MR. LAFAYETTE:** I HAVE A COMMENT, YOUR HONOR. I NEED  
7 TO MAKE IT BEFORE WE GIVE THE ARGUMENT.

8 **THE COURT:** ALL RIGHT, SIDEBAR.

9 (DISCUSSION HELD AT SIDEBAR; NOT REPORTED.)

10 **THE COURT:** LADIES AND GENTLEMEN, BEFORE I HAVE  
11 ARGUMENT, I NEED YOU TO LEAVE THE COURTROOM FOR A FEW MINUTES  
12 AND I'LL BE CALLING YOU BACK FOR THE ARGUMENT.

13 BEAR WITH US.

14 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

15 **THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS  
16 BACK IN SESSION.

17 **THE COURT:** ALL RIGHT. THE SIDEBAR CONCERNED THE  
18 DAMAGES WHICH ARE APPROPRIATE GIVEN THE FINDINGS, AND I THINK  
19 THAT MR. LAFAYETTE IS ACTUALLY RIGHT.

20 BECAUSE THERE WAS NO FINDING ON GENDER DISCRIMINATION OR  
21 FEHA, ONLY ON THE HARASSMENT AND THEN THE FAILURE TO PREVENT  
22 THE HARASSMENT, I DON'T THINK THAT THE ECONOMIC DAMAGES ARE  
23 ACTUALLY RECOVERABLE. I WISH I WOULD HAVE THOUGHT ABOUT THAT  
24 BEFORE.

25 ARGUMENT?

1           **MS. NUGENT:** HE MAY BE RIGHT, YOUR HONOR. I JUST  
2 WANT TO LOOK AT THE AUTHORITY.

3           **THE COURT:** IF THAT'S THE CASE, THEN WHAT I CAN TELL  
4 THE JURY IS THAT THE ONLY DAMAGES -- AND WE'LL CHANGE THE  
5 VERDICT FORM SO IT ONLY GIVES THEM THE ABILITY TO GIVE THE  
6 EMOTIONAL DISTRESS DAMAGES, UNLESS YOU WANT ME TO REINSTRUCT  
7 THEM.

8           **MS. NUGENT:** WE ARE STILL LOOKING AT THE *TRUJILLO*  
9 CASE. IT APPEARS THAT PLAINTIFF DIDN'T PREVAIL ON ANYTHING  
10 EXCEPT FOR THE FAILURE TO PREVENT. SO WE ARE TRYING TO FIND  
11 SOME AUTHORITY FOR OUR PARTICULAR SITUATION.

12                   (THE JUDGE LEAVES THE BENCH.)

13                   (PAUSE IN THE PROCEEDINGS.)

14           **THE CLERK:** REMAIN SEATED. COME TO ORDER. THIS  
15 COURT IS BACK IN SESSION.

16                   (PAUSE IN THE PROCEEDINGS.)

17           **THE COURT:** ANYTHING?

18           **MR. LAFAYETTE:** *DICKSON V. BURKE WILLIAMS, INC.*, 234  
19 CAL. APP. FOURTH --

20           **THE COURT:** 234 CAL. APP. FOURTH.

21           **MR. LAFAYETTE:** 1307.

22           AND THIS IS A CASE WHERE THE COURT INSTRUCTED ON THE  
23 FAILURE TO PREVENT AFTER THERE WAS A FINDING THAT THERE WASN'T  
24 DISCRIMINATION AND THERE WASN'T HARASSMENT IN THE CASE.

25           AND THE COURT OF APPEALS FINDS THAT IN THE ABSENCE OF THE

1 FINDING, THERE CANNOT BE A VALID CLAIM FOR FAILURE TO PREVENT.  
2 AND IT ANALYZES EACH ONE OF THOSE SEPARATELY BEFORE IT GOES ON  
3 TO RENDER ITS TOTAL OPINION.

4 SO OUR POSITION IS THAT TO THE EXTENT THAT THERE WERE TWO  
5 OTHER CLAIMS -- THE ONLY CLAIMS IT COULD HAVE INCLUDED THE  
6 ECONOMIC LOSS CLAIMS WERE THE RETALIATION AND THE  
7 DISCRIMINATION CLAIMS, THOSE WERE LOST. AND SO THOSE DAMAGES  
8 THERE DON'T APPLY. THE FAILURE TO PREVENT CAN ONLY APPLY TO  
9 THE HARASSMENT CLAIM, AND THAT HARASSMENT CLAIM IS LIMITED TO  
10 EMOTIONAL DISTRESS.

11 **THE COURT:** RESPONSE?

12 **MS. NUGENT:** WELL, FROM WHAT I JUST HEARD AND A QUICK  
13 READ OF IT, THAT SEEMS TO BE THE SIMILAR SITUATION AS  
14 TRUJILLO. THERE WAS NO LIABILITY ON THE UNDERLYING  
15 DISCRIMINATION OR HARASSMENT CLAIMS, BUT A FAILURE TO PREVENT.

16 WE ARE LOOKING AGAIN AT THE JURY INSTRUCTION FOR FAILURE  
17 TO PREVENT AND -- BECAUSE IT DOES SAY THERE ARE LOST WAGES ON  
18 THERE. I UNDERSTAND THE THEORY; OF COURSE IT DOES MAKE SENSE,  
19 BUT WE CAN'T FIND ANYTHING ON THAT.

20 **THE COURT:** MR. LAFAYETTE, LET ME ASK YOU THIS.

21 **MR. LAFAYETTE:** YES, YOUR HONOR.

22 **THE COURT:** I TEND TO AGREE WITH YOU. I GUESS THE  
23 QUESTION IS, GIVEN THAT THE ECONOMIC -- GIVEN THAT THE VERDICT  
24 FORM SEPARATES THEM OUT, SHOULD I JUST -- A PERSPECTIVE ON  
25 WHETHER I SHOULD JUST TAKE THE VERDICT WITH THE NUMBERS AND



1 THEN DEAL WITH IT AFTER THE FACT?

2 **MR. LAFAYETTE:** I DON'T THINK SO, YOUR HONOR.  
3 BECAUSE THAT MEANS I'M STANDING UP GIVING AN ARGUMENT, AND I  
4 DON'T WANT TO ADDRESS THAT BECAUSE THAT'S NOT PART OF THE  
5 CASE. IT JUST PUTS ME IN A VERY AWKWARD POSITION.

6 **MS. NUGENT:** AND I DON'T WANT TO DO THAT EITHER.

7 **THE COURT:** WELL, MY INCLINATION IS TO ADVISE THEM  
8 THAT UPON FURTHER REFLECTION THE ECONOMIC DAMAGES DO NOT  
9 APPLY.

10 PERHAPS IF WE FOUND SOME CASE TOTALLY TO THE CONTRARY, I  
11 COULD ALWAYS AMEND THE VERDICT MYSELF IN THE FUTURE. I MEAN  
12 CERTAINLY THE PAST WAGES IS A KNOWABLE NUMBER. THE ONLY THING  
13 WOULD BE FUTURE. SO -- AND THEN THE VERDICT FORM WOULD ONLY  
14 HAVE THE EMOTIONAL DISTRESS LINE.

15 **MR. LAFAYETTE:** THAT'S CORRECT, YOUR HONOR.

16 **MS. NUGENT:** I THINK THAT IS THE SAFEST COURSE OF  
17 ACTION AT THIS MOMENT.

18 **THE COURT:** ALL RIGHT. LET'S CALL THEM BACK IN.

19 (WATCH PHONE RINGS)

20 **MR. LAFAYETTE:** IT THINKS I'M TALKING TO IT, YOUR  
21 HONOR. SORRY.

22 **THE COURT:** CAREFUL, THEY ARE COLLECTING EVERYTHING.

23 **MR. LAFAYETTE:** THEY ARE.

24 **THE CLERK:** ALL RISE.

25 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

1           **THE CLERK:**   YOU MAY BE SEATED.

2           **THE COURT:**   OKAY.   LADIES AND GENTLEMEN, THANK YOU  
3           FOR YOUR PATIENCE.

4           IN LIGHT OF YOUR DECISION, I HAVE CONFERRED WITH THE  
5           LAWYERS AND I AM GOING TO AMEND THE INSTRUCTIONS THAT I JUST  
6           GAVE YOU.

7           FIRST OF ALL, BECAUSE YOU ONLY FOUND ON THE HARASSMENT  
8           CLAIM AND THE FAILURE TO PREVENT BASED UPON QUESTION ONE, THE  
9           ONLY MEASURE OF DAMAGES THAT ARE ACTUALLY RECOVERABLE ARE PAST  
10          AND FUTURE MENTAL SUFFERING AND EMOTIONAL DISTRESS.

11          SO PAST LOST EARNINGS AND FUTURE LOST EARNINGS ARE  
12          ACTUALLY NOT RECOVERABLE GIVEN YOUR FINDINGS.

13          SO MY INSTRUCTIONS RELATIVE TO THE EMOTIONAL DISTRESS ARE  
14          THE ONES THAT APPLY HERE.   I'M GOING TO ALLOW THE ATTORNEYS TO  
15          DO THEIR ARGUMENT ON THAT BASIS, AND I WILL BE BACK -- I'LL  
16          HAVE MORE TO SAY TO YOU AFTER THEY ARE DONE WITH THEIR  
17          ARGUMENT.

18          WE WILL START WITH YOU, MS. NUGENT.

19          AND PUNITIVES, THE ISSUES WITH RESPECT TO PUNITIVES ARE  
20          STILL IN PLAY, JUST LIMITING THE NATURE OF THE DAMAGES.

21          **THE CLERK:**   WILL YOU BE USING THE MONITORS, THE  
22          TECHNOLOGY?

23          **MS. NUGENT:**   YES, PLEASE.

24                            **CLOSING ARGUMENT**

25          **MS. NUGENT:**   OKAY.   OKAY.   OKAY.   WELL, THANK YOU

1       VERY MUCH. THIS IS GOING TO BE A LITTLE FLY BY THE SEAT OF  
2       OUR PANTS. WE HAVE HEARD WHAT YOU HAD TO SAY.

3           FIRST OF ALL, THANK YOU SO MUCH FOR ALL OF THE ATTENTION  
4       THAT YOU'VE GIVEN TO THIS CASE AND ALL THE TIME. WE HAVE ALL  
5       COMMENTED ON THE FACT THAT WE REALIZE HOW SERIOUSLY YOU ARE  
6       TAKING YOUR DUTY. WE REALLY APPRECIATE THAT. SO JUST A  
7       LITTLE BIT MORE, AND I WILL BE QUICK.

8           SO, WHEN THINGS LIKE THIS HAPPEN, WHEN COMPANIES HARASS AN  
9       EMPLOYEE, CAUSE HER HARM, THE LAW PROVIDES REMEDIES FOR THAT.  
10      THE LAW CANNOT PUT MS. NEWTON BACK INTO THAT JOB. SHE (SIC)  
11      CANNOT PUT HER BACK INTO A JOB WHERE SHE WAS SO EXCITED TO BE  
12      THERE, WHERE SHE WAS SO PROUD. HER SISTER DESCRIBED HER AS  
13      PRACTICALLY BRAGGING TO THE REST OF THE FAMILY ABOUT THAT JOB.  
14      WE CAN'T PUT HER BACK IN THAT MOMENT OF TIME. WE CAN'T. ALL  
15      WE CAN DO IS TRY TO MAKE HER WHOLE NOW.

16           AND THE LAW PROVIDES THOSE REMEDIES, AND THE LAW SAYS THAT  
17      YOU, AS A JURY, GET TO DISPENSE SOME JUSTICE FOR THAT AND TRY  
18      AND MAKE HER WHOLE.

19           SO IN THIS PHASE OF THE DELIBERATIONS, YOU WILL BE  
20      DECIDING TWO THINGS: THE AMOUNT OF EMOTIONAL DISTRESS DAMAGES  
21      TO COMPENSATE MS. NEWTON FOR THE HARM THAT SHELL CAUSED HER  
22      WHILE SHE WAS AT THAT JOB AND AFTERWARDS AND ALSO TO MAKE  
23      SHELL FINALLY TAKE RESPONSIBILITY FOR ITS MALICIOUS CONDUCT.

24           YOU HEARD MS. NEWTON'S TESTIMONY ABOUT THIS JOB OF A  
25      LIFETIME. YOU HEARD ABOUT THE HUMAN SUFFERING, THE HUMAN

1 DAMAGES THAT SHE ENDURED. AND THERE IS NO FORMULA FOR YOU TO  
2 FIGURE IT OUT. THERE ISN'T. THERE WAS NO, NO EXPERT COMING  
3 IN HERE AND GIVING YOU ANY NUMBERS. THIS IS GOING TO BE UP TO  
4 YOU.

5 BUT, AGAIN, IT'S NOT JUST THE HARM SHELL CAUSED MS. NEWTON  
6 BECAUSE SHE WAS FIRED, BUT ALSO WHILE SHE WAS THERE.

7 AND SO I WANT TO REMIND YOU OF SOME OF THE THINGS THAT SHE  
8 TOLD YOU ABOUT HOW IT FELT TO BE THERE. HOW IT FELT TO HEAR  
9 MR. FISCHER SAY TO HER THAT SHE WAS, YOU KNOW, COULDN'T PUT  
10 HER ON A TEAM BECAUSE THERE WAS ALREADY A GIRL ON THAT TEAM.  
11 SHE SAID IT MADE HER FEEL INFERIOR; THAT SHE WAS BEING PLACED  
12 IN A SMALL BOX.

13 WHEN SHE FOUND THAT STICKER ON HER DESK, SHE TOLD YOU THAT  
14 SHE WAS SHAKING, RIGHT? EVERYONE WAS LOOKING AT HER. SHE WAS  
15 SINGLED OUT.

16 SHE ALSO TALKED ABOUT MR. FISCHER AND THE WAY HE  
17 INTIMIDATED HER, THE WAY HE RESPONDED TO HER, THE THINGS THAT  
18 HE WAS SAYING TO HER, THREATENING HER, WALKING WOMEN TO THE  
19 GATE. WHY WOULD HE TELL HER THAT? RIGHT? WHY WOULD HE TELL  
20 HER THAT? SHE SAID, I FELT LIKE HE WAS THREATENING ME.

21 AND THESE ARE IN THE FIRST FEW MONTHS OF A JOB THAT SHE  
22 TRIED REALLY HARD TO GET. AND WAS REALLY LUCKY TO GET. SHE  
23 TOLD YOU THAT, TOO. SHE FELT REALLY LUCKY TO GET THAT JOB.

24 AND WHEN SHE WAS BEING HARASSED, IT WAS EMBARRASSING. IT  
25 WAS EMBARRASSING. SHE WAS HUMILIATED. SHE WAS ASHAMED.

1           SHE TOLD YOU ABOUT HOW IT FELT AFTER SHE GOT FIRED. SHE  
2           FELT DEFEATED, EMBARRASSED, DEPRESSED ABOUT IT. SHE HAD A LOT  
3           OF ANXIETY. AS YOU CAN IMAGINE, SHE WAS THINKING ABOUT IT ALL  
4           THE TIME, RUMINATING WHAT HAPPENED, WHAT HAPPENED TO THIS ONCE  
5           IN A LIFETIME OPPORTUNITY.

6           SHE HAD A COUSIN'S WEDDING SHE DIDN'T WANT TO GO TO, OTHER  
7           SOCIAL SITUATIONS SHE AVOIDED, RIGHT? EVERYONE KNEW -- HER  
8           SISTER SAID, EVERYBODY KNEW THAT SHE HAD THAT JOB. AND THEY  
9           WERE ALL ASKING HER ABOUT IT. SHE WOULD HAVE TO SAY, WELL, I  
10          DON'T WORK THERE ANY MORE. WELL, WHY, WHY DON'T YOU WORK  
11          THERE ANYMORE?

12          THERE WERE -- YOU CAN GO BACK. YOU CAN GO BACK, YEAH.

13          SHE TOLD YOU SHE WORKED HARD FOR IT IN THAT CAREER AND  
14          THAT OPPORTUNITY WAS TAKEN AWAY FROM HER. SO THIS IS YOUR JOB  
15          TO TELL SHELL TO COMPENSATE HER FOR HOW IT MADE HER FEEL.  
16          THIS IS YOUR JOB TO MAKE HER AS WHOLE AS POSSIBLE.

17          HER SISTER CAME AND TALKED TO YOU ALSO ABOUT THE CHANGES  
18          SHE SAW. I ALREADY SAID WHEN MS. NEWTON GOT THE JOB HOW  
19          EXCITED SHE WAS, AND HOW SHE'S DIFFERENT NOW. SHE'S NOT THAT  
20          CONFIDENT SISTER THAT THEY WOULD GO SNOW BOARDING AND TO THE  
21          BEACH WITH, WHO NEVER HAD ANY PROBLEMS IN SOCIAL SITUATIONS,  
22          WAS TOO COOL FOR HER SISTER, WHO WAS SO SELF-ASSURED, WHO HAD  
23          WANTED A JOB AT THE REFINERY SINCE SHE WAS A TEENAGER.

24          THAT'S NOT WHO HER SISTER SEES NOW. THIS FIRING KNOCKED  
25          HER DOWN. THOSE WERE BRIANNA'S WORDS. SHE'S NOW LESS

1 CONFIDENT. MS. NEWTON TOLD YOU THAT HERSELF AND HER SISTER  
2 SEES IT. SHE'S MORE RESERVED. SHE DOUBTS HERSELF.

3 IT TOOK HER A LONG TIME. SHE'S A WORKER. SHE DOES HAVE A  
4 JOB NOW. SHE HAS TO TRAVEL A LONG WAY, BUT SHE IS WORKING FOR  
5 ANOTHER CORPORATION, AND SHE'S HOPING TO CLIMB HER WAY UP.

6 BUT HER SISTER SEES THE ANXIETY AND SEES HOW LOW SHE GOT  
7 AND HOW SHE COULDN'T HELP HER MOM ANY MORE AT A TIME WHEN HER  
8 MOM REALLY NEEDED HER.

9 SO I TALKED IN THE OPENING ABOUT DAMAGE TO THE WALLET,  
10 RIGHT? BUT THIS IS HUMAN SUFFERING. AND A LOT OF PEOPLE  
11 THINK THAT HUMAN SUFFERING IS WORTH MORE THAN DAMAGE TO THE  
12 WALLET IN THE END. AND SO IT'S GOING TO BE UP TO YOU. IT IS  
13 GOING TO BE UP TO YOU COLLECTIVELY. WE TRUST YOU. WE TRUST  
14 THAT YOU ARE GOING TO COME UP WITH A FIGURE TO COMPENSATE HER  
15 FOR WHAT SHE WENT THROUGH THERE, TO HAVE THAT DREAM CRUSHED.  
16 WE TRUST YOU.

17 SOME PEOPLE TRY AND TIE IT TO SOME ECONOMIC DAMAGES, MAYBE  
18 TWICE THAT, THAT SAME AMOUNT. SOME PEOPLE THINK MORE THAN  
19 THAT SHELL SHOULD PAY TO COMPENSATE HER. SOME PEOPLE THINK  
20 LESS, BUT IT'S UP TO YOU.

21 LET'S LOOK AT ONE DEFENSE THAT SHELL HAS THE BURDEN TO  
22 PROVE, BUT THEY DIDN'T. IT'S GOING TO BE CALLED AVOIDABLE  
23 CONSEQUENCES IN YOUR BOOKLET.

24 YOU HAVE ALREADY FOUND THAT SHELL FAILED TO PREVENT  
25 HARASSMENT, SO WHEN YOU LOOK AT THIS, I THINK YOU WILL SEE

1 THAT SHELL HAS NOT PROVED THIS DEFENSE. SHELL DID NOT TAKE  
2 REASONABLE STEPS TO PREVENT THIS. YOU KNOW THAT.

3 WHEN MS. NEWTON FIRST COMPLAINED TO ERIC PEREZ ABOUT  
4 HOSTILE AND HARASSING TREATMENT IN MARCH OF 2016, SHE FOLLOWED  
5 UP ALMOST EVERY MONTH AFTER THAT. AND MIKE BECK, WHO WE ARE  
6 GOING TO TALK ABOUT IN A MOMENT, KNEW IT. HE KNEW IT. HE  
7 KNEW IT THE ENTIRE TIME.

8 HER EMAIL FOLLOWING UP ON THE STICKER IN SEPTEMBER, ON TWO  
9 DATES IN SEPTEMBER, THEY WENT TO MIKE BECK. IN FACT, ONE TIME  
10 ERIC JUST FORWARDED IT TO HIM. HE DIDN'T DO ANYTHING EXCEPT  
11 FIRE HER.

12 THEY -- TWO MORE WORDS, CHRISTINE LAYNE. SHE ADMITTED TO  
13 YOU THAT MS. NEWTON KNEW -- THAT SHE KNEW THAT MS. NEWTON WAS  
14 COMPLAINING ABOUT DISCRIMINATION, MAYBE NOT USING THAT WORD.  
15 SHE KNEW WHAT IT MEANT. COMPLAINING ABOUT HARASSMENT, MAYBE  
16 NOT USING THAT WORD. MS. LAYNE KNEW WHAT IT MEANT. MS. LAYNE  
17 EVEN DISCOURAGED HER FROM COMPLAINING.

18 MS. NEWTON KNEW SHELL'S OWN POLICIES. YOU HAVE THOSE  
19 EXHIBITS BACK THERE. YOU MAY HAVE ALREADY LOOKED AT THEM, 102  
20 AND 103. AND MS. NEWTON USED THOSE WORDS IN THE POLICIES.  
21 BEFORE THAT AUGUST 2ND MEETING SHE LOOKED AT THEM. SHE USED  
22 THOSE EXACT WORDS TO TRY TO COMPLAIN.

23 SHELL DID NOTHING. MS. LAYNE TOLD YOU ABOUT ALL OF THE  
24 AVENUES THAT EMPLOYEES CAN USE TO COMPLAIN. MS. NEWTON USED  
25 JUST ABOUT EVERY SINGLE ONE OF THOSE. SHE RATTLED OFF ALL THE

1 PEOPLE SHE COMPLAINED TO. SHELL STILL DID NOTHING. SHELL HAS  
2 NOT PROVEN THIS DEFENSE.

3 SO LET'S TALK ABOUT PUNITIVE DAMAGES. YOU WERE JUST  
4 INSTRUCTED ON A QUESTION THAT YOU'RE GOING TO HAVE TO ANSWER,  
5 SO THIS WILL BE ON YOUR VERDICT FORM. THIS IS THE QUESTION.  
6 YOU ARE GOING TO BE LOOKING AT THIS CONDUCT, SEEING WHETHER IT  
7 CONSTITUTES MALICE, OPPRESSION, OR FRAUD. YOU'VE HEARD THE  
8 DEFINITIONS. YOU'LL HAVE THEM.

9 AND WAS IT BY A MANAGING AGENT OF EQUILON, AND THAT'S MIKE  
10 BECK. AND, YES, HE DID.

11 MIKE BECK TOLD YOU HE'S A MANAGING AGENT. HE HAS BEEN  
12 THERE SINCE 1988. 30 YEARS. HE TOLD YOU THE BUCK STOPS WITH  
13 HIM. HE TOLD YOU HE WAS RESPONSIBLE FOR ALL THE OPERATIONS IN  
14 THE OPERATION CENTRAL DEPARTMENT. HE HAD TOTAL CONTROL OVER  
15 IT. HE WAS RESPONSIBLE FOR ALL THE EMPLOYEES THERE. HE HAD  
16 THE AUTHORITY TO MAKE DECISIONS TO HIRE AND FIRE. HE TOLD YOU  
17 THAT. HE WAS RESPONSIBLE FOR ALL THE PROJECTS IN THE  
18 DEPARTMENT. HE TOLD YOU THAT, TOO.

19 AND HE ACTED WITH MALICE. HE KNEW IT. HE WAS CONSCIOUS  
20 OF EVERYTHING THAT WAS GOING ON AND HE FIRED MS. NEWTON  
21 ANYWAY. AND THAT IS DESPICABLE.

22 HE RECEIVED THOSE EMAILS. DID HE FOLLOW UP WITH  
23 MS. NEWTON? HEY, YOU GOT THIS STICKER ON YOUR DESK. I AM SO  
24 SORRY. NO. NOTHING. NEVER TALKED TO HER ABOUT IT. DID HE  
25 ENSURE THAT CHRISTINE LAYNE DID? NO. HE SAID HE EXPECTED HER



1 TO. DID HE EVER CHECK? NO. SAME THING WITH ERIC PEREZ.

2 AND, OF COURSE, MR. BECK WAS IN THAT MEETING WITH RICHARD  
3 METCALF AND ERIC PEREZ WHEN THEY PRESSURED HIM, METCALF TO  
4 CHANGE HIS RATINGS SO THEY COULD FIRE HER. HE WAS THERE. HE  
5 WANTED IT TO HAPPEN. HE WANTED TO FIRE HER. HE MADE IT  
6 HAPPEN. THAT IS MALICIOUS.

7 MR. METCALF SAYS, YEAH, TWO MONTHS, 57 DAYS I'VE BEEN  
8 SUPERVISING HER. YOU'RE A GOOD OPERATOR. HERE'S YOUR REVIEW.  
9 AND BECK SAID CHANGE IT. WE'VE DECIDED TO FIRE HER, WE CAN'T  
10 WITH THIS, CHANGE IT. THAT'S MALICIOUS. THAT'S OUTRAGEOUS TO  
11 END HER CAREER LIKE THAT.

12 SOMETHING ELSE HE WAS ON; THIS EMAIL AT THE END. THEY  
13 NEEDED MORE TO FIRE HER, SO THEY CAME UP WITH THIS HOT WORK  
14 PERMIT FOR MIKE CUTSHAW. DID YOU SEE MIKE CUTSHAW IN HERE?  
15 YOU DID SEE EXHIBIT 68 WHERE HE DIDN'T WANT HIS NAME ON IT.  
16 DID THEY BRING HIM IN HERE AND SAY IT HAPPENED? NO. MORE  
17 PAPER TRAIL, MORE DOCUMENTATION TO GET HER OUT OF THERE.

18 AND MIKE BECK WAS IN ON THAT. HE KNEW WHAT THEY WERE  
19 DOING. IT WAS A CAMPAIGN TO DRIVE HER OUT, AND HE  
20 PARTICIPATED IN IT. THAT WAS THEIR PLAN. IT WAS  
21 REPREHENSIBLE. HE'S THE HEAD OF THE DEPARTMENT. HE WAS PART  
22 OF IT. THEY ENDED HER CAREER.

23 AND ANSWER "YES" TO THIS QUESTION, AND THAT WILL ALLOW YOU  
24 TO SEND A LOUD AND CLEAR MESSAGE TO SHELL, TO HOLD IT  
25 ACCOUNTABLE FOR WHAT IT DID TO MS. NEWTON WHILE SHE WAS THERE,

1 AND THE EFFECTS AFTERWARDS, AND THAT WILL ALLOW YOU TO ENSURE  
2 THAT THIS DOES NOT HAPPEN TO ANY OTHER WOMAN AT THAT REFINERY.

3 **THE COURT:** MR. LAFAYETTE.

4 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

5 **THE CLERK:** WILL YOU ALSO BE USING THE TECHNOLOGY?

6 **MR. LAFAYETTE:** YES.

7 (PAUSE IN THE PROCEEDINGS.)

8 **THE CLERK:** ARE YOU CONNECTING TO --

9 **MR. LAFAYETTE:** DEFENSE MONITOR.

10 (PAUSE IN THE PROCEEDINGS.)

11 **THE CLERK:** I'LL --

12 **THE COURT:** CAN WE INSTANT MESSAGE DOUG?

13 **THE CLERK:** SURE.

14 **THE COURT:** I KNOW HE TRIED A BUNCH OF THINGS AND  
15 FOUND IT.

16 **THE CLERK:** OKAY.

17 (SYSTEM CONNECTED)

18 **THE COURT:** THANK YOU. THERE IT IS. THANK YOU.

19 (PAUSE IN THE PROCEEDINGS.)

20 **THE COURT:** MR. LAFAYETTE, ARE YOU READY?

21 **MR. LAFAYETTE:** I LOST MY POWER POINT. I JUST HAVE  
22 TO PULL IT BACK UP.

23 (PAUSE IN THE PROCEEDINGS.)

24 (DISPLAYED ON SCREEN.)

**CLOSING ARGUMENT**

**MR. LAFAYETTE:** GOOD AFTERNOON. I LISTENED TO CAREFULLY TO WHAT YOU SAID, AND THE CASE HAS CHANGED FROM ONE OF MILLIONS OF DOLLARS IN ECONOMIC LOSS TO ONE OF EMOTIONAL DISTRESS. AND THAT'S WHAT I AM GOING TO TALK TO YOU ABOUT THIS AFTERNOON. I'M GOING TO GO THROUGH THIS AND TALK ABOUT WHAT I THINK THE DAMAGES ISSUES ARE.

WE TALKED ABOUT ALL OF THESE DIFFERENT THINGS, BUT THE ONE THING I WANT TO REMIND YOU OF IS THIS: THE BURDEN OF PROOF. IN THIS CASE IT'S NOT UP FOR THE DEFENDANT TO DENY ANYTHING, IT'S NOT UP FOR THE DEFENDANT TO SAY ANYTHING OTHER THAN -- OR TO MAKE A BURDEN. IT'S THE PLAINTIFF'S BURDEN TO PROVE BY A PREPONDERANCE OF THE EVIDENCE WHAT SHE HAS NOW CLAIMS THAT SHE'S LOST, THE VALUE OF HER ECONOMIC DAMAGES.

AND YOU MAY RECALL THAT WHEN WE -- AND THAT'S BY A PREPONDERANCE. SO IF YOU ARE SO EVENLY DIVIDED AGAIN AS TO WHAT THAT SHOULD BE, THEN THAT BURDEN HASN'T BEEN MET. THAT'S WHERE WE START WITH THIS.

SO WHAT IS EMOTIONAL DISTRESS DAMAGES? TO RECOVER FOR FUTURE MENTAL SUFFERING OR EMOTIONAL DISTRESS, MS. NEWTON MUST PROVE THAT SHE IS REASONABLY CERTAIN TO SUFFER THAT HARM IN THE FUTURE, MEANING YOU HAVE TO BELIEVE THAT AS OF THIS MOMENT NOW, SHE IS GOING TO CONTINUE TO HAVE EMOTIONAL INJURY AND YOU'RE GOING TO HAVE TO PUT A DOLLAR VALUE ON THAT.

SO FOR FUTURE MENTAL SUFFERING OR EMOTIONAL DISTRESS

## CLOSING ARGUMENT - LAFAYETTE

1 DETERMINE THE AMOUNT IN CURRENT DOLLARS. THE AMOUNT OF FUTURE  
2 MENTAL SUFFERING OR EMOTIONAL DISTRESS DAMAGES SHOULD NOT BE  
3 FURTHER REDUCED TO PRESENT VALUE DOLLARS.

4 NOW, FOR PAST, I WANT YOU TO THINK ABOUT A COUPLE OF  
5 THINGS. SHE WORKED FOR A COMPANY FOR NINE MONTHS. DURING  
6 THAT NINE MONTHS, SHE NEVER DID ANYTHING TO SEEK ANY TYPE OF  
7 MEDICAL ASSISTANCE. SHE NEVER TOOK ANY MEDICATION. THERE'S  
8 NO EVIDENCE HERE THAT SHE DID ANYTHING OUT OF THE ORDINARY  
9 OTHER THAN WHAT YOU OR I OR ANYONE ELSE MAY DO.

10 THAT'S THE EVIDENCE IN THIS CASE AS WE'RE TALKING ABOUT  
11 WHAT HER EMOTIONAL INJURY IS IN THIS CASE. WE'RE NOT TALKING  
12 ABOUT SOMETHING THAT'S THE NORMAL THINGS THAT EVERYBODY GOES  
13 THROUGH. THAT'S NOT WHAT WE ARE TALKING ABOUT. WE ARE  
14 TALKING ABOUT SOMETHING THAT'S BEYOND THE NORMAL THAT WE ALL  
15 GO THROUGH ON A DAY-TO-DAY BASIS. BECAUSE IF YOU'RE GOING TO  
16 PAY SOMEONE FOR SOMETHING ABOVE THAT, THEN YOU ARE PAYING THEM  
17 FOR SOMETHING THAT WE ALL GO THROUGH ON A DAY-TO-DAY BASIS.  
18 THAT'S NOT WHAT WE TALKING ABOUT HERE.

19 SO LET'S LOOK AT IT. I DON'T HAVE AN IDEA AS TO WHICH  
20 ONES OF THE THINGS THAT YOU GUYS LOOKED AT AND YOU SAID THIS  
21 IS WHAT CAUSES HER TO HAVE BEEN HARASSED AND THIS IS WHAT  
22 CAUSES THE EMOTIONAL INJURY, SO I HAVE TO SPEAK A BIT BROADLY  
23 ABOUT THIS.

24 I SORT OF LOOK AT THIS AS TWO DIFFERENT AREAS WHERE THERE  
25 COULD POSSIBLY BE EMOTIONAL INJURY. ONE, ASSOCIATED WITH

1       WHATEVER HAPPENED WHEN SHE WAS WORKING WITH MR. FISCHER.  THE  
2       OTHER IS THE STICKER.

3           NOW, IF I AM LOOKING AT WHAT HAPPENS WITH MR. FISCHER,  
4       THERE ARE A COUPLE OF THINGS I LOOK AT.  ONE IS -- I'M GOING  
5       TO SAY IT BECAUSE I HAVE TO SAY IT, AND THAT IS WHATEVER THAT  
6       WAS, THAT HAPPENED PRIOR TO MAY 23RD.

7           SO NOW WHAT WE ARE LOOKING AT IS TRYING TO COMPENSATE HER  
8       FOR SOMETHING THAT TOOK PLACE MORE THAN A YEAR BEFORE SHE  
9       FILED HER CLAIM.  WE TALKED ABOUT THAT IN THE FIRST SET OF  
10      INSTRUCTIONS.  I'M NOT GOING TO TALK ABOUT THAT AGAIN.  BUT IF  
11      YOU THINK ABOUT WHAT HAPPENED WITH MR. FISCHER, I WANT YOU TO  
12      THINK ABOUT SOME OF THE OTHER TESTIMONY.

13          YOU HAD MR. PATRIK NEUMAN COME IN.  AND PATRIK NEUMAN SAID  
14      HE COULD SEE NO ANY DISCERNIBLE DIFFERENCE BETWEEN WHAT HE  
15      WENT THROUGH AND WHAT SHE WENT THROUGH WORKING WITH  
16      MR. FISCHER.

17          MR. NEUMAN IS YOUR GUIDEPOST.  MR. NEUMAN BECOMES THE  
18      PERSON THAT YOU SORT OF LOOK TO.  BECAUSE HE DOESN'T HAVE A  
19      CLAIM FOR EMOTIONAL DISTRESS INJURY.  HE IS ONE OF US.  HE IS  
20      A PERSON THAT GOES THROUGH WHATEVER THEY GO THROUGH ON A  
21      DAY-TO-DAY BASIS AT WORK, WHETHER OR NOT YOU LIKE IT OR DON'T  
22      LIKE IT, BUT HE'S YOUR GUIDEPOST.

23          ONCE WE GET PASSED HIM, WE THEN GET TO THE STICKER.  AND  
24      THE STICKER IS THERE; BUT A PRESENTATION OF A STICKER THAT  
25      NEVER APPEARED AFTER THAT, THAT NEVER APPEARED BEFORE THAT,

1 NOR ANYTHING ELSE BEFORE THAT. WE DON'T HAVE A CASE HERE  
2 WHERE SOMEONE IS SAYING THEY WERE SEXUALLY HARASSED BECAUSE  
3 PEOPLE WERE USING DEROGATORY NAMES ABOUT WOMEN. WE DON'T HAVE  
4 THAT.

5 WE HAVE A CASE WHERE SOMEONE SAYS THAT WOMEN DON'T MAKE  
6 IT. BUT IF YOU LISTENED, IF YOU LISTEN TO WHAT MENA -- I CAN  
7 NEVER GET HIS NAME RIGHT -- SAID DURING THE TRIAL, HE SAID IT  
8 WAS IN REFERENCE NOT TO -- THAT MR. FISCHER DIDN'T WANT THEM  
9 THERE, BUT THAT IT WAS SOMETHING THAT WAS OBSERVED, THAT WOMEN  
10 DIDN'T STAY IN THE DEPARTMENT.

11 SO, EMOTIONAL DISTRESS INJURY, HOW DO YOU COMPENSATE FOR  
12 THIS? PLAINTIFFS HAVE NOT TOLD YOU A SUM OF MONEY. AND AT  
13 SOME POINT I PROBABLY WILL TALK ABOUT A SUM OF MONEY, ABOUT  
14 WHAT YOU PAY SOMEONE UNDER THESE CIRCUMSTANCES. BECAUSE AT  
15 THE END OF THE DAY THAT'S WHAT WE ARE TALKING ABOUT HERE.

16 SO THEN YOU GET TO -- SO WHAT AM I POINTING HERE? SHE  
17 NEVER SOUGHT MEDICAL TREATMENT. SHE NEVER SOUGHT IT WHILE AT  
18 EQUILON. SHE HASN'T SOUGHT IT AFTER SHE GOT TERMINATED.  
19 THAT'S NOT THERE.

20 MOST OF THESE CASES THAT YOU LOOK AT, YOU KIND OF SEE THAT  
21 PEOPLE GO TO A DOCTOR. THEY GET SOME MEDICATION. THE ONLY  
22 PERSON WHO'S TESTIFIED ABOUT GOING TO GET SOME MEDICATION AND  
23 GOING TO A DOCTOR IS CAMERON CURRAN. HE'S THE ONLY ONE  
24 BECAUSE HE SAID IT KEPT HIM UP. I DIDN'T HEAR THAT TYPE OF  
25 TESTIMONY FROM MS. NEUMAN -- MS. NEWTON. NO MEDICAL BILLS.

1 NO EVIDENCE OF EMOTIONAL DISTRESS.

2 AND SHE TOOK ALL OF HER VACATION. FIRST, SHE TOOK THE  
3 BEREAVEMENT LEAVE, BUT THAT'S BECAUSE IT WAS NECESSARY. THEN  
4 SHE TOOK ALL OF HER VACATION BEFORE SHE WENT ON SHIFT. AND  
5 THEN THEY GAVE HER ADDITIONAL VACATION AND TIME OFF TO GO TO  
6 DEAL WITH THE WEDDING SHE WANTED TO APPEAR IN.

7 SO FUTURE EMOTIONAL DISTRESS, WHERE IS THE EVIDENCE THERE?  
8 WHERE'S THE EVIDENCE THAT SHE IS STILL GOING THROUGH  
9 SOMETHING? ONE OF THE THINGS THAT WE CAN TALK ABOUT, AND I  
10 HAVE TO SAY THIS, BECAUSE YOU HAVE ALREADY DETERMINED THAT HER  
11 TERMINATION CLAIMS DON'T SURVIVE, SHE DOESN'T GET DAMAGES FOR  
12 THAT.

13 WHAT THAT MEANS IS THIS: IF SHE'S ACTUALLY SAYING HOW  
14 BADLY SHE FELT BECAUSE SHE GOT TERMINATED, THAT'S NOT PART OF  
15 THE EMOTIONAL DISTRESS DAMAGES THAT GOES TO THE HARASSMENT;  
16 THAT WOULD HAVE BEEN PART OF THE EMOTIONAL DISTRESS DAMAGES  
17 THAT WOULD HAVE BEEN ASSOCIATED WITH HER TERMINATION. SO WE  
18 SHOULDN'T BE LOOKING AT THAT.

19 WE SHOULD ONLY BE LOOKING AT HOW SHE FELT RELATIVE TO THE  
20 THINGS THAT SHE SAID HAPPENED TO HER WHILE SHE WAS AN  
21 EMPLOYEE. THAT'S THE ONLY THING THAT WE SHOULD BE LOOKING AT;  
22 NOT HOW SHE FELT AS A RESULT OF HER TERMINATION BECAUSE THAT'S  
23 GONE NOW.

24 I DIDN'T HEAR HER SAY THAT BECAUSE OF WHAT HAPPENED TO HER  
25 SHE HAS PLANS FOR TREATMENT. THERE IS NO EVIDENCE OF THAT. I

1 DON'T HEAR HER SAYING THAT ANYTHING IS HAPPENING AS A RESULT  
2 OF WHAT HAPPENED OTHER THAN HER TERMINATION.

3 NOW, THE AVOIDABLE CONSEQUENCES DOCTRINE. THIS BECOMES  
4 SORT OF AWKWARD BECAUSE I AM NOT EXACTLY SURE WHERE THE  
5 EMOTIONAL DISTRESS -- WHERE THE HARASSMENT TAKES PLACE.

6 THIS IS AN INSTRUCTION THAT PUTS THE BURDEN ON THE  
7 DEFENDANT. IF CIARA NEWTON PROVES THAT A SUPERVISOR HARASSED  
8 HER BASED UPON HER GENDER, THEN THE DEFENDANT IS RESPONSIBLE  
9 FOR HARM. HOWEVER, WE CLAIM THAT CIARA NEWTON COULD HAVE  
10 AVOIDED SOME OR ALL OF THE HARM WITH REASONABLE EFFORT. TO  
11 SUCCEED, THE DEFENDANT TOOK REASONABLE STEPS TO PREVENT AND  
12 CORRECT WORKPLACE GENDER HARASSMENT. SO LET'S START THERE.

13 DO WE HAVE POLICIES AND PROCEDURES IN PLACE? YES, WE DO.

14 DO WE EDUCATE PEOPLE ON THE POLICIES AND PROCEDURES? YES,  
15 WE DO.

16 DID SHE GET EDUCATED ON THE POLICIES AND PROCEDURES? YES,  
17 SHE DID.

18 DO WE GIVE PEOPLE ALTERNATE AVENUES OF COMPLAINING? YES,  
19 MANAGEMENT, HUMAN RESOURCES, 800 NUMBER, THE UNION, ALL OF  
20 THOSE.

21 I HEARD A COMMENT THAT SHE HAD USED ALL OF THOSE. I  
22 LISTENED CAREFULLY TO HER UNION STEWARD'S TESTIMONY. HE SAYS  
23 IT ON THE AUGUST 2 MEETING. DURING THE MEETING HE TOOK HER  
24 ASIDE AND THE TWO OF THEM SPOKE. AND THAT'S WHEN SHE SAID SHE  
25 WANTED TO DELAY PROVIDING NAMES, SHE WANTED TO DELAY



## CLOSING ARGUMENT - LAFAYETTE

1 IDENTIFYING EVENTS. THAT'S WHAT HE TESTIFIED TO. AND HE SAID  
2 THAT THEY THEN AGREED AND TOOK A BREAK AND THEY SAID THEY  
3 WOULD COME BACK AFTER THE LONG CHANGE.

4 WELL, WE KNOW THAT'S THE END OF AUGUST IS THE LONG CHANGE.  
5 AND THAT'S WHEN SHE WOULD PROVIDE SOME ADDITIONAL INFORMATION  
6 ABOUT THE NAMES, THE PEOPLE, THE EVENTS.

7 BEFORE THAT MEETING ON AUGUST 2, SHE SAID SHE ALSO HAD  
8 SOME NOTES THAT SHE WOULD GIVE. WE ALL KNOW THAT SHE NEVER  
9 GAVE THE NOTES. THOSE WERE THE ONES SHE PREPARED ON AUGUST 1.  
10 SHE NEVER GAVE THOSE.

11 SO NOW, THE NEXT THING WE KNOW IS ON AUGUST 29 THERE ARE  
12 TWO THINGS THAT HAPPENED. ONE THING THAT HAPPENS ON  
13 AUGUST 29, I THINK THAT MS. NEWTON FOCUSES, TOO, IS THE  
14 STICKER. THE OTHER THING THAT HAPPENS ON AUGUST 29 IS  
15 MR. PEREZ TRAVELING FROM HIS LOCATION TO HERS TO ASK HIM TO  
16 FOLLOW UP ON WHAT HAD BEEN AGREED TO ON AUGUST 2; THAT IS FOR  
17 HER TO PROVIDE THE ADDITIONAL INFORMATION SO THEY COULD LOOK  
18 INTO THINGS.

19 NOW, I AM SIMPLY NOT STANDING HERE AND RELYING ON THE  
20 TESTIMONY THAT CAME OUT OF THE MOUTH OF CHRISTINE LAYNE OR  
21 CAME OUT OF THE MOUTH OF ERIC PEREZ, I'M TELLING YOU ABOUT THE  
22 TESTIMONY THAT CAME FROM THE MOUTH OF HER UNION STEWARD WHO  
23 CAME BECAUSE HE THOUGHT SHE WAS GOING TO GET TERMINATED ON THE  
24 2ND. THAT'S WHAT I'M TALKING ABOUT.

25 BECAUSE HE SAID A COUPLE OF THINGS. HE SAID YOU COULD

## CLOSING ARGUMENT - LAFAYETTE

1 COME TO THE UNION AND PRESENT SOMETHING TO THE UNION AND WE  
2 COULD TAKE THAT TO MANAGEMENT ON YOUR BEHALF. THAT'S WHAT HE  
3 SAID. NOT ME. THAT'S WHAT HE SAID.

4 HE SAID SHE NEVER DID THAT BECAUSE SHE SAID SHE THOUGHT  
5 EVERYTHING WAS OVER AS OF THE MEETING ON AUGUST 2. THAT'S  
6 WHAT HE SAID, EVERYTHING WAS OVER AS OF THAT DAY.

7 SO NOW, WHAT WE MOST NEEDED FROM HER WE NEVER GOT. THAT'S  
8 A REALITY OF IT BECAUSE IT'S NOT -- THERE'S NO DOUBT THAT WE  
9 NEVER GOT IT. I KNOW PLAINTIFF'S COUNSEL SAYS, WELL, DID WE  
10 REALLY NEED IT? IT'S LIKE A NEEDLE IN A HAYSTACK IF YOU DON'T  
11 GET IT.

12 NORMALLY WHEN SOMEONE COMES TO YOU AND THEY SAY, JOE, OR  
13 JIM, OR JOHN, THESE ARE THE WITNESSES. THEY SAW THIS. THEY  
14 HEARD THAT. THEY DID THIS. AND THEN YOU CAN GO TO THEM AND  
15 SAY, DID THAT HAPPEN? DID YOU SEE THAT? WAS SOMEONE TREATED  
16 DIFFERENTLY THAN HER? WERE THEY NOT WRITING UP OTHER PEOPLE  
17 WHEN THEY WERE WRITING UP HER? AND THEY COULD COME AND THEY  
18 COULD TELL MANAGEMENT. AND THEY COULD HAVE COME INTO THIS  
19 COURTROOM AND SAID, I SAW THAT HAPPEN. BUT IT DIDN'T HAPPEN  
20 THEN, AND IT DIDN'T HAPPEN IN THIS COURTROOM.

21 THAT'S THE DILEMMA WE ARE ALL CONFRONTED WITH. THAT'S THE  
22 DILEMMA THAT MANAGEMENT IS CONFRONTED WITH WHEN IT DOESN'T GET  
23 THAT ASSISTANCE WHERE IT CAN ACTUALLY HELP, THEN IT IS  
24 CONSTRAINED TO HELP. AND TO THEN SAY THAT THEY SHOULD HAVE  
25 DONE SOMETHING WHEN YOU DIDN'T DO WHAT YOU NEEDED TO DO AND

1       THEREIN LIES MY HARM, THAT'S WHAT THE AVOIDABLE CONSEQUENCES  
2       DOCTRINE IS ALL ABOUT.

3           YOU SEE, AT ITS CORE, IT IS SOMETHING THAT DOESN'T RELATE  
4       TO LAW, IT'S SOMETHING THAT RELATES TO HUMAN BEHAVIOR.   HOW  
5       CAN I SUE FOR A HARM THAT I COULD HAVE AVOIDED?   I COULD HAVE  
6       AVOIDED WALKING OUT IN FRONT OF THE CAR.   I COULD HAVE AVOIDED  
7       WALKING UNDERNEATH THE LADDER.   ALL OF THESE THINGS PEOPLE  
8       COULD HAVE AVOIDED, AND THIS IS THE ISSUE OF THE AVOIDABLE  
9       CONSEQUENCES DOCTRINE.   THAT'S WHAT WE ARE TALKING ABOUT.   AND  
10      NOW IT'S BEEN SORT OF REDUCED TO THIS.

11           SO WERE THERE REASONABLE STEPS?   YES.   THE FIRST OF THOSE  
12      REASONABLE STEPS IS THE IMPLEMENTATION OF POLICIES AND  
13      PROCEDURES.   IT'S THE TRAINING OF PEOPLE ON THE POLICIES AND  
14      PROCEDURES.   IT IS ADVISING PEOPLE OF THE POLICIES AND  
15      PROCEDURES TO CREATE AN OPPORTUNITY WHERE SOMEONE CAN COME  
16      FORWARD AND COMPLAIN.   THAT EXISTED.

17           AND JUST LIKE IN THE JULY 22 MEETING WHEN SHE SAID THAT  
18      THERE WAS A CONCERN THAT SHE WASN'T BEING TREATED FAIRLY WITH  
19      REGARD TO THE ATTENDANCE POLICY, YOU SAW THAT THEY WENT AND  
20      GOT WHAT THEY COULD TO EVALUATE THE MERITS OF THAT.   THEY WENT  
21      AND PULLED THE GATE LOGS.   THEY TRIED TO DETERMINE WHAT THE  
22      HOURS WERE, AND THEY TRIED TO DETERMINE IF ANYBODY ELSE WAS  
23      LATE OTHER THAN SHE WAS.

24           AND YOU'VE ACTUALLY HEARD THOSE WITNESSES COME IN AND SAY  
25      THEY WERE NOT.   EACH AND EVERY ONE OF THEM.   THEY DID WHAT

1       THEY COULD HAVE DONE ONCE SHE PROVIDED THE INFORMATION. BUT  
2       WHEN SHE DIDN'T, IT CONSTRAINED THEM. AND TO SOMEHOW COME  
3       BACK AND SAY THAT EVEN THOUGH I DIDN'T PROVIDE THE  
4       INFORMATION, THEY ARE RESPONSIBLE FOR MY HARM IS NOT  
5       CONSISTENT WITH THE LOGIC THAT WE THINK OF, WHICH IS WHAT THE  
6       AVOIDABLE CONSEQUENCES DOCTRINE IS.

7           WAS HER FAILURE UNREASONABLE? WELL, STOP FOR A SECOND.  
8       WHO ALL TOLD HER? FIRST, SHE LEARNED IT ON THE ONBOARDING.  
9       IF SHE DIDN'T GET IT ON THE ONBOARDING OR THE MATERIAL SHE GOT  
10      LIKE THE ANTI-HARASSMENT POLICY, AND EVERYTHING ELSE, IF SHE  
11      DIDN'T GET IT THERE, SHE GOT IT FROM HER UNION. SHE GOT IT  
12      FROM THEM MOST DEFINITELY ON AUGUST 2. THERE IS NO DOUBT  
13      ABOUT THAT.

14           AND IF SHE DIDN'T GET IT THERE, THEN SHE GOT IT FROM HER  
15      SISTER, BRIANNA, WHO CAME AND TESTIFIED THAT SHE'S IN HUMAN  
16      RESOURCES AND SHE TOLD HER WHAT SHE NEEDED TO DO.

17           SO NOW I'M LOOKING AT THIS, AND I WANT YOU TO SEE WHAT I  
18      SEE; THAT POLICIES AND PROCEDURES, SHE'S REPEATEDLY TOLD WHAT  
19      SHE NEEDS TO DO, AND SHE DOESN'T DO IT. NEVER DOES THAT.  
20      NEVER DOES THAT.

21           SO THAT THE REASONABLE USE OF DEFENDANT'S PROCEDURES WOULD  
22      HAVE PREVENTED SOME OR ALL OF CIARA NEWTON'S HARM. THAT'S ONE  
23      OF THOSE THINGS WHERE WE ALL SORT OF SIT THERE AND WE SAY,  
24      OKAY, AT WHAT POINT?

25           MAYBE YOU BELIEVE THAT SHE TOLD ERIC PEREZ BACK IN MARCH

1        THAT OTHER THAN I DIDN'T THINK MR. FISCHER WAS A GOOD PERSON,  
2        ALL RIGHT, OR I DIDN'T THINK HE WAS A GOOD INSTRUCTOR, IT'S  
3        NOT ABOUT WHETHER HE'S A GOOD INSTRUCTOR. IT'S NOT ABOUT  
4        WHETHER OR NOT HE'S TERSE OR FIRM OR IRASCIBLE, OR GETS  
5        FRUSTRATED WITH PEOPLE, BECAUSE HE GOT FRUSTRATED WITH  
6        EVERYBODY. IT'S NOT WHETHER OR NOT HE DID IT BECAUSE SHE'S A  
7        WOMAN AS OPPOSED TO ANYTHING ELSE.

8            HE DID IT NOT BECAUSE HE'S A DRILL SERGEANT TYPE PERSON,  
9        BUT HE DID IT BECAUSE HE'S (SIC) A WOMAN AND IT COULD HAVE  
10       BEEN AVOIDED IF SHE HAD SAID THAT.

11           AND I DON'T THINK THAT THERE IS ANY TESTIMONY THAT SHE  
12       SAYS ANYTHING OTHER THAN VAGUE REFERENCES, NOT COMING IN AND  
13       SAYING HE'S TREATING ME DIFFERENTLY, HE'S SAYING THINGS TO ME  
14       DIFFERENTLY BECAUSE I'M A WOMAN AND I NEED YOU TO MAKE THAT  
15       STOP. I DIDN'T HEAR ANYBODY SAY THEY HEARD THAT AND I DIDN'T  
16       HEAR HER SAY SHE SAID IT.

17           AND WHEN WE START TALKING ABOUT A FAILURE TO PREVENT HERE,  
18       NOW THIS COMES BACK TO US AGAIN. WAS THERE MORE THAT SHE  
19       COULD HAVE DONE, AND THAT'S REALLY THE QUESTION, IS THERE MORE  
20       THAT SHE COULD HAVE DONE.

21           I HAVE A DAUGHTER. I ONLY HAVE ONE KID, ONE DAUGHTER.  
22       AND WITH MY DAUGHTER --

23           **MS. NUGENT:** OBJECTION, YOUR HONOR.

24           **THE COURT:** SUSTAINED.

25           **MR. LAFAYETTE:** I AM OF THE VIEW THAT WHAT YOU HAVE

1 TO DO IS THINK WHAT CAN I DO. AND IF YOU SIT THERE AND YOU  
2 THINK TO YOURSELF THERE'S MORE SHE COULD HAVE DONE, MORE SHE  
3 COULD HAVE SAID --

4 **MS. NUGENT:** OBJECTION, YOUR HONOR.

5 **MR. LAFAYETTE:** IT GOES TO THE BURDEN OF PROOF.

6 **THE COURT:** THE OBJECTION IS OVERRULED ON THAT  
7 PARTICULAR STATEMENT.

8 **MR. LAFAYETTE:** IF YOU THINK THAT THERE'S MORE SHE  
9 COULD HAVE DONE, THERE'S MORE SHE COULD HAVE SAID TO HAVE  
10 STOPPED WHATEVER SHE SAYS WAS HAPPENING TO HER, THEN YOU HAVE  
11 TO SAY SHE SHOULD HAVE DONE THAT. BECAUSE THAT'S HER  
12 RESPONSIBILITY TO MAKE SURE THAT SHE IS SAFE, TO MAKE SURE  
13 THAT SHE'S NOT BEING HARMED, TO MAKE SURE THAT SHE'S NOT BEING  
14 INJURED. THAT'S HER RESPONSIBILITY. AND YOU HAVE TO HOLD HER  
15 ACCOUNTABLE TO THAT.

16 NOW, IT'S EASY FOR ANYBODY TO SAY I'M AFRAID TO COMPLAIN.  
17 WHERE DO WE DRAW THE LINE? YOU CAN PREACH TO PEOPLE. YOU CAN  
18 TELL THEM THE POLICIES CLEARLY ABSOLUTELY SAY THERE WILL BE NO  
19 RETALIATION. IF THERE IS RETALIATION, LET US KNOW ABOUT THAT,  
20 AND WE'LL DEAL WITH IT. BUT IF SOMEONE SIMPLY SITS THERE AND  
21 SAYS I'M AFRAID TO COMPLAIN, WHERE COULD YOU EVER DRAW THE  
22 LINE? HOW COULD YOU EVER MANAGE THAT? THAT'S NOT REASONABLE.

23 MAYBE IF SHE HAD COME IN AND SHE SAID, JEFF FISCHER OR  
24 SOMEBODY TOLD ME THEY WERE GOING TO GET ME IF I EVER  
25 COMPLAINED, THAT WOULD BE DIFFERENT. I DIDN'T HEAR ANYTHING

1       LIKE THAT.

2           INSTEAD, WHAT I HEARD WAS JEFF FISCHER WAS HELPFUL. WHEN  
3 I NEEDED TO SIT DOWN WITH HIM, HE SAT DOWN WITH ME. WHEN I  
4 NEEDED INSTRUCTION, HE GAVE ME THAT. I DIDN'T HEAR SOMETHING  
5 THAT INDICATED THAT THERE WAS ANY REASON TO BE FEARFUL OF  
6 RETALIATION FROM JEFF FISCHER. SO THAT'S NOT REASONABLE, AND  
7 SO YOU HAVE TO LOOK AT ALL THE EVIDENCE. NOT JUST OF THINGS  
8 THAT MAY COME OUT OF SOMEONE'S MOUTH ON THESE ISSUES.

9           SO NOW WE GET TO PUNITIVE DAMAGES. THIS IS WHERE SOMEONE  
10 WANTS TO TAKE A BUNCH OF MONEY FROM SOMEBODY ELSE, TO BE  
11 CLEAR. AND THIS IS NOT SOMETHING THAT'S DONE LIGHTLY.  
12 BECAUSE WHEN YOU LOOK AT THIS, THE BURDEN HAS NOW CHANGED.  
13 IT'S NO LONGER A PREPONDERANCE OF THE EVIDENCE. IT IS NOW  
14 SOMETHING THAT'S CALLED CLEAR AND CONVINCING EVIDENCE, LEAVES  
15 YOU WITH A FIRM BELIEF OR CONVICTION. LET'S LISTEN TO THAT,  
16 FIRM BELIEF AND CONVICTION.

17           THAT'S ONE OF THOSE THINGS WHERE IF ANYTHING EVER GETS TO  
18 THE POINT OF BEING AS CLOSE TO AN ABSOLUTE CERTAINTY WITH YOU,  
19 THIS IS THAT. THIS IS NOT WHERE I'M BALANCING SOMETHING LIKE  
20 THIS. NO. THIS IS CERTAINTY, UNHESITATING. THAT'S WHAT I  
21 THINK YOU SHOULD BE LOOKING AT HERE AS YOU COME TO THESE  
22 QUESTIONS, AS YOU COME TO THESE QUESTIONS.

23           SO YOU SEE THAT THE COURT TELLS YOU, THIS IS A HIGHER  
24 STANDARD OF PROOF THAT BY PREPONDERANCE OF THE EVIDENCE. DO  
25 YOU SEE THAT? THAT'S WHAT IT SAYS. AND THAT'S THE LAW. SO

## CLOSING ARGUMENT - LAFAYETTE

1 YOU CAN'T JUST SORT OF WILLY-NILLY GO WITH THIS. YOU CAN'T.  
2 YOU HAVE TO GRAPPLE WITH THIS AND SAY I GOT IT. THEY'VE  
3 PROVED IT BY CLEAR AND CONVINCING EVIDENCE.

4 WHAT IS IT THEY HAVE TO PROVE? MALICE, FRAUD, OR  
5 OPPRESSION. MALICE, FRAUD, OPPRESSION.

6 THEN THEY HAVE TO SHOW THAT MIKE BECK, NOT THAT HE WAS  
7 AWARE SHE WAS GETTING FIRED, NOT THAT HE WAS AWARE OF  
8 SOMETHING GENERAL, BUT HE WAS SPECIFICALLY AWARE THAT THERE  
9 WAS MALICE, THAT THERE WAS OPPRESSION, AND THAT THERE WAS  
10 FRAUD. THAT'S WHAT MIKE BECK HAS TO BELIEVE.

11 AND IF YOU DON'T HAVE CLEAR AND CONVINCING PROOF OF THAT,  
12 THEN YOU CAN'T DO THAT. YOU CAN'T DO THAT. YOU CAN'T GO  
13 THERE.

14 SO NOW, SO WITH REGARD TO THIS, HE AUTHORIZED OR RATIFIED  
15 THE CONDUCT, THE CONDUCT FOUND TO BE OPPRESSIVE, MALICIOUS, OR  
16 FRAUDULENT. THAT MEANS FOR WHATEVER IT IS THAT YOU THINK  
17 THAT'S THERE, YOU HAVE TO BELIEVE THAT IN MIKE BECK'S MIND HE  
18 BELIEVED THE EXISTENCE OF THAT, THAT THERE HAD BEEN THAT.

19 NOT THAT HE WAS GENERALLY AWARE OF SOME STUFF, BUT OF  
20 THAT, OF THAT; THAT SHE WAS BEING SEXUALLY HARASSED. HE HAD  
21 TO HAVE KNOWN THAT THAT ACTUALLY EXISTED. NOT THAT SHE HAD  
22 ALLEGED IT. NOT THAT SOMEONE HAD GENERALLY SAID IT, BUT THAT  
23 IT ACTUALLY EXISTED IS WHAT HE HAS TO KNOW.

24 SO NOW, WHEN THE EMPLOYER IS A CORPORATION, THE  
25 AUTHORIZATION MUST BE BY AN OFFICER, DIRECTOR, OR MANAGING



1 AGENT OF THE CORPORATION.

2 CLEAR AND CONVINCING AGAIN. SO WHAT IS A MANAGEMENT  
3 AGENT? FIRST, YOU HAVE TO DECIDE BY CLEAR AND CONVINCING  
4 EVIDENCE, BY CLEAR AND CONVINCING EVIDENCE IF MIKE BECK IS A  
5 MANAGING AGENT.

6 NOW, LET'S TALK ABOUT THIS FOR A SECOND FOR A SECOND.  
7 EXERCISE SUBSTANTIAL INDEPENDENT AUTHORITY AND JUDGMENT IN THE  
8 CORPORATE DECISION MAKING SO THAT THEIR DECISIONS ULTIMATELY  
9 DETERMINE CORPORATE POLICY. THE ABILITY TO HIRE AND FIRE  
10 PEOPLE IS NOT IN ITSELF SUFFICIENT. CORPORATE LIABILITY FOR  
11 PUNITIVE DAMAGES DOES NOT DEPEND UPON AN EMPLOYEE'S MANAGERIAL  
12 LEVEL, BUT ON THE EXTENT TO WHICH THAT EMPLOYEE EXERCISES  
13 SUBSTANTIAL DISCRETIONARY AUTHORITY OVER DECISIONS THAT  
14 ULTIMATELY DETERMINE CORPORATE POLICY.

15 ULTIMATELY DETERMINE CORPORATE POLICY. NOT WHAT HAPPENS  
16 ON A PARTICULAR SHIFT, CORPORATE POLICY. THAT'S THE STANDARD.  
17 BY CLEAR AND CONVINCING EVIDENCE, THAT'S THE STANDARD THAT HAS  
18 TO BE MET.

19 LET'S TALK ABOUT HIM. IS THERE ANY EVIDENCE THAT HE WAS  
20 AN OFFICER OR DIRECTOR OF EQUILON OR OF THE SHELL OIL COMPANY?  
21 NO. THERE ISN'T ANYTHING LIKE THAT HERE.

22 WAS HE THE TOP PERSON IN THE REFINERY SUCH THAT HE COULD  
23 DICTATE WHAT HAPPENS IN THE REFINERY? NO. AT BEST, HE HAD  
24 SUPERVISION OVER 60 PEOPLE OUT OF 700 PEOPLE WHO WORKED AT THE  
25 REFINERY. THERE IS NOTHING THAT DISPUTES THAT.

1           COULD HE INDEPENDENTLY HIRE AND FIRE PEOPLE? NO. THERE'S  
2           A BUZZ WORD HERE, THE BUCK STOPS HERE, BUT LET'S PROBE A  
3           LITTLE DEEPER BEHIND WHAT THAT MEANS TO SAY THE BUCK STOPS  
4           HERE.

5           CAN HE HIRE SOMEONE WITHOUT -- NO, HE CAN'T. HE HAS TO  
6           TALK TO OTHER PEOPLE. CAN HE FIRE SOMEONE? NO, HE CAN'T DO  
7           THAT EITHER. HE CAN MAKE A RECOMMENDATION. HE HAS TO TALK TO  
8           HUMAN RESOURCES BEFORE HE DOES THAT. HE HAS TO TALK TO THOR  
9           NYGAARD BEFORE HE DOES THAT. HE HAS TO TALK TO TOM RIZZO  
10          BEFORE THAT. HE CAN'T DO THAT ON HIS OWN.

11          SO WHERE IS THE TESTIMONY THAT HE CAN DO SOMETHING THAT  
12          SETS CORPORATE POLICY? SO LET'S CHECK THESE OFF.

13          COULDN'T FIRE WITHOUT TALKING TO SOMEONE. HE COULDN'T SET  
14          ANY POLICIES WITHOUT TALKING TO SOMEONE. HE DID NOT HAVE  
15          RESPONSIBILITY FOR ANY OTHER REFINERY OPERATIONS.

16          AND THEN WHAT WE REALIZE IS EQUILON IS MORE THAN JUST THE  
17          MARTINEZ REFINERY, RIGHT? THERE ARE TWO OTHER REFINERIES AT  
18          LEAST AT A MINIMUM. PUGET SOUND AND ONE IN ALABAMA. HE'S GOT  
19          ANY RESPONSIBILITIES OVER HOW THEY RUN THOSE REFINERIES DOWN  
20          THERE? NO.

21          CAN HE SAY ANYTHING TO THEM ABOUT POLICIES? NO, HE CAN'T.  
22          HE CAN'T.

23          SO WHERE IS THE EVIDENCE THAT MIKE BECK CAN DO ANYTHING,  
24          ANYTHING TO SET CORPORATE POLICY AND DECISION MAKING? HE  
25          COULDN'T. AND WHATEVER HE COULD DO WAS ALL SUBJECT TO

1       OVERSIGHT.

2               SO ONCE WE DO THAT, WE THEN SAY IF YOU GET TO THE POINT  
3       WHERE YOU CONCLUDE THAT MIKE BECK IS NOT A MANAGING AGENT,  
4       THEY HAVEN'T MET THEIR BURDEN TO START TALKING ABOUT PUNITIVE  
5       DAMAGES IN THIS CASE.

6               IF THEY DO, WHICH I DON'T THINK THEY CAN BASED UPON WHAT  
7       I'M LOOKING AT HERE AND BASED ON WHAT I'M SEEING THE LAW TO  
8       BE, ULTIMATELY DETERMINE CORPORATE POLICY, IT'S NOT MIKE BECK.

9               BUT ASSUMING YOU DIFFER WITH ME, IS THAT THE END OF THE  
10      STORY? NO.

11              THEY HAVE TO DO SOMETHING ELSE. THEY HAVE TO SHOW THAT HE  
12      WAS AWARE OF AND THAT HE RATIFIED THE SPECIFIC MALICIOUS  
13      CONDUCT. SPECIFIC MALICIOUS CONDUCT.

14              SO THIS IS -- START HERE. THIS IS EXHIBIT 33 AND 34A.

15                               (DISPLAYED ON SCREEN.)

16              SO LET'S LOOK AT THIS. WHAT DID MIKE BECK KNOW? LOOK AT  
17      THIS. DO YOU SEE A CONCLUSION? DO YOU SEE SOMEONE CONCLUDING  
18      IN THIS PASSAGE RIGHT HERE THAT SHE HAD BEEN DISCRIMINATED  
19      AGAINST? DO YOU SEE SOMEONE CONCLUDING THAT SHE HAD BEEN  
20      HARASSED? DO YOU SEE SOMEONE CONCLUDING THAT THEY HAVE  
21      INVESTIGATED AND MADE A DETERMINATION THAT ANY OF THESE  
22      STATEMENTS ARE TRUE? NO. THESE ARE JUST ALLEGATIONS.

23              NOW WHEN WAS THIS DOCUMENT CREATED? YOU CAN LOOK AT IT  
24      WHEN YOU GO BACK IN THERE. THIS IS CREATED LEADING UP TO THE  
25      AUGUST 2 MEETING. THESE ARE MR. PEREZ'S NOTES SUMMARIZING

## CLOSING ARGUMENT - LAFAYETTE

1 WHAT HE WANTS TO TALK TO HER ABOUT WHEN THEY GET TO THE  
2 AUGUST 2 MEETING. THAT IS WHAT THESE ARE. THIS IS WHAT HE'S  
3 TRYING TO GET MORE INFORMATION FROM HER ABOUT WHEN THEY GO TO  
4 THE AUGUST 2 MEETING. THIS IS WHAT SHE NEVER GIVES.

5 SO, THE INSTRUCTION SAYS THERE HAS TO BE CLEAR AND  
6 CONVINCING EVIDENCE THAT HE WAS AWARE OF MALICIOUS CONDUCT,  
7 FRAUDULENT CONDUCT, OPPRESSIVE CONDUCT, AND THAT HE BASICALLY  
8 SAID THAT'S ALL RIGHT WITH ME.

9 WITHOUT HER GIVING US THESE ANSWERS TO THESE QUESTIONS,  
10 FILLING IN THE GAPS HERE, HOW CAN HE POSSIBLY SAY THAT'S ALL  
11 RIGHT WITH ME? HE CAN'T.

12 SO NOW THIS DOCUMENT.

13 (DISPLAYED ON SCREEN.)

14 THIS IS THE AUGUST 29 EMAIL. AND I SHOW YOU THIS BECAUSE  
15 YOU CAN SEE MR. BECK IS REFERENCED HERE IN THIS EMAIL, RIGHT?  
16 HE IS. HE GETS THIS EMAIL. BUT WITH REGARD TO THE CONDUCT  
17 THAT HE IS RATIFYING, LET'S LOOK AND SEE IF HE'S RATIFYING  
18 SOMETHING SAYING TO SOME CONDUCT IS ALL RIGHT WITH ME.

19 AND THE FIRST PARAGRAPH HERE, MR. PEREZ IS SAYING SHE'S  
20 NOT GIVING HIM THE INFORMATION SUCH THAT HE CAN DO SOMETHING.  
21 RIGHT? THAT'S WHAT HE'S SAYING.

22 AND IN THE BOTTOM PARAGRAPH, HE'S ACKNOWLEDGING THE  
23 EXISTENCE OF THE STICKER, BUT HE SAYS HERE, I TOLD HER THE  
24 STICKER WAS NOT APPROPRIATE AND THIS WILL NOT BE TOLERATED AT  
25 MARTINEZ.

1           SO TO THE EXTENT THAT MR. BECK IS ACKNOWLEDGING ANYTHING  
2           AND RATIFYING ANYTHING, HE'S RATIFYING THAT STATEMENT THAT  
3           THIS IS NOT SOMETHING THAT WILL BE TOLERATED.

4           HOW CAN YOU FLIP THAT AND SAY THAT SOMEHOW HE'S  
5           ACKNOWLEDGING AND RATIFYING SOMETHING DIFFERENT? AND HOW CAN  
6           YOU GO THAT WITH CLEAR AND CONVINCING EVIDENCE? YOU CANNOT.  
7           THAT DOESN'T EXIST.

8           SO NOW, I TALKED ABOUT THIS PHRASE "RATIFICATION". YOU  
9           SEE, RATIFICATION IS THE CONFIRMATION AND ACCEPTANCE OF A  
10          PREVIOUS ACT. SO WITH REGARD TO THE STICKER, DID HE SAY I  
11          THINK THAT'S FINE? I'M GOOD WITH THAT? HE DIDN'T SAY IT IN  
12          THESE CORRESPONDENCE AND HE DIDN'T SAY IT IN THIS COURTROOM.  
13          CLEAR AND CONVINCING EVIDENCE DID NOT HAPPEN.

14          WHAT HE HAD TO DO... WHERE HE SAID HE ACCEPTED SOME ACT  
15          THAT WAS MALICIOUS CONDUCT THAT WAS OUTRAGEOUS. THAT DOESN'T  
16          EXIST HERE.

17          MALICE, CONDUCT THAT WAS DESPICABLE AND DONE WITH THE  
18          WILLFUL AND KNOWING DISREGARD OF THE RIGHTS. WELL, IF HE'S  
19          RATIFYING ANYTHING, HE'S RATIFYING TRYING TO GET THE ANSWERS,  
20          TRYING TO FIND OUT WHAT IT'S ABOUT. IT IS NOT SAYING THAT I  
21          THINK THAT SOMETHING HAPPENED TO HER AND I THINK IT'S ALL  
22          RIGHT WITH ME, THAT'S NOT WHAT'S HAPPENING HERE BY CLEAR AND  
23          CONVINCING EVIDENCE.

24          OPPRESSION? CONDUCT THAT WAS DESPICABLE, DESPICABLE. DID  
25          HE RATIFY SOME CONDUCT THAT WAS DESPICABLE, OPPRESSIVE, OR

1 FRAUDULENT? NO EVIDENCE. SO YOU CAN'T SAY THERE WAS CLEAR  
2 AND CONVINCING.

3 BECK DID NOT RATIFY. HE WAS NEVER TOLD THAT THERE WAS THE  
4 EXISTENCE OF AS OPPOSED TO THE ALLEGATION OF SOMETHING, AND AS  
5 TO THE ALLEGATION, THERE WAS NO EVIDENCE FORTHCOMING TO VERIFY  
6 IT.

7 WHEN HE HEARD ABOUT THE STICKER, HE TESTIFIED HERE THAT HE  
8 REQUESTED AN INVESTIGATION. DOES THAT MEAN THAT HE'S SUPPOSED  
9 TO GO TALK TO HER? NO. AND IF HE DID DO THAT OR DIDN'T DO  
10 THAT, WOULD THAT BE CLEAR AND CONVINCING EVIDENCE THAT HE  
11 RATIFIED SOMETHING? NO. IT'S JUST A SOUND BITE. IT'S NOT  
12 VERIFICATION OF RATIFICATION BY CLEAR AND CONVINCING EVIDENCE.

13 NO KNOWLEDGE.

14 SO WE GET TO THIS. AND I THINK THIS IS THE FORM THAT YOU  
15 GUYS GET TO, AND THIS IS WHERE I HAVE TO TALK ABOUT --

16 **THE COURT:** THAT WILL BE REVISED OR HAS BEEN REVISED.

17 **MR. LAFAYETTE:** I DON'T HAVE --

18 **THE COURT:** THAT'S FINE. YOU CAN USE IT, BUT BECAUSE  
19 ECONOMIC DAMAGES ARE NOT AT ISSUE --

20 **MR. LAFAYETTE:** YES, I UNDERSTAND, YOUR HONOR.

21 **THE COURT:** -- IT WILL BE TAKEN OUT.

22 GO AHEAD.

23 **MR. LAFAYETTE:** THANK YOU.

24 I AM STRIKING OUT 2 BECAUSE 2 IS NO LONGER WITH US. OKAY?  
25 WE AWARD CIARA NEWTON DAMAGES FOR PAST AND FUTURE MENTAL

1 SUFFERING AND EMOTIONAL DISTRESS. SO, HERE, HOW MUCH DO YOU  
2 AWARD SOMEONE?

3 HOW MUCH MONEY DID SHE MAKE? THAT'S ONE THING YOU CAN  
4 LOOK AT. YOU SAY, OKAY, SHE WENT TO WORK EVERY DAY. SHE MADE  
5 X AMOUNT OF DOLLARS WHEN SHE WAS WORKING THERE AND MAYBE WE  
6 PAY HER THAT. OR MAYBE WE PAY HER A FRACTION OF THAT. MAYBE  
7 WE PAY HER \$25,000. MAYBE. IT'S UP TO YOU. BUT YOU DON'T  
8 HAVE A BENCHMARK AND YOU DON'T HAVE A GUIDE. ALL YOU KNOW IS  
9 HOW MUCH MONEY SHE MADE, AND MAYBE YOU USE THAT AS YOUR GUIDE.

10 NOW, ONCE YOU DO THAT THEN, YOU HAVE TO DECIDE SOMETHING.  
11 COULD SHE HAVE AVOIDED SOME OF IT? YOU SEE, THIS IS WHERE THE  
12 AVOIDABLE CONSEQUENCES DOCTRINE COMES IN. IS THERE SOMETHING  
13 THAT SHE COULD HAVE DONE TO HAVE AVOIDED SOMETHING. BECAUSE  
14 IF SHE COULD HAVE, THEN YOU HAVE TO REDUCE IT BY THE AMOUNT  
15 THAT SHE COULD HAVE AVOIDED.

16 THERE'S A RANGE, AND I AM GOING TO TELL YOU ABOUT THE  
17 RANGE. THE INSTRUCTION SAYS ALL OR PART OF. ALL OR PART OF.  
18 SO IF IN YOUR MIND YOU THINK THAT IF SHE HAD BEEN MORE DIRECT,  
19 MORE FORTHCOMING, THAT SHE COULD HAVE SAID SOMETHING TO HAVE  
20 AVOIDED ALL OF HER HARM SO THAT PEOPLE COULD HAVE COME IN AND  
21 DONE THE THINGS THAT THEY DO, THEN THAT WOULD MEAN SHE HAS NO  
22 HARM, THAT SHE HAS NO DAMAGES. AND THAT WOULD BE A ZERO.

23 IF YOU THINK THAT THERE IS SOME HARM THAT BECAME, THIS IS  
24 THE MAGIC PIECE OF THIS, SEVERE AND PERVASIVE, BEFORE SHE  
25 COULD HAVE ACTED, BEFORE SHE COULD HAVE ACTED, THEN SHE WOULD

## CLOSING ARGUMENT - LAFAYETTE

1 BE ENTITLED TO THAT. SEVERE AND PERVASIVE MEANS IT WOULD  
2 HAPPEN ALL THE TIME, IT WAS LIKE REALLY, REALLY BAD. IF SHE  
3 COULD HAVE STEPPED IN AND STOPPED IT BEFORE IT GOT TO THAT,  
4 THEN SHE WOULDN'T HAVE HAD ANY HARM, WOULD SHE?

5 BUT IF SOMETHING HAD RISEN TO THE LEVEL OF BEING SEVERE  
6 AND PERVASIVE BEFORE SHE COULD HAVE REASONABLY ACTED, THEN YOU  
7 SHOULD GIVE HER THAT. BUT THAT'S THE -- THAT'S ONE OF THE  
8 THINGS THAT YOU GUYS HAVE TO CONSIDER WHEN YOU GO BACK IN  
9 THERE AND TALK SOME MORE.

10 NOW, I THINK I LIKE TO HOLD PEOPLE ACCOUNTABLE FOR  
11 MANAGING THEIR OWN LIFE. IN MY WORLD, I LIKE TO SAY IF  
12 SOMETHING IS HAPPENING THAT YOU DON'T LIKE, SPEAK UP. BECAUSE  
13 THE SYSTEM IS DESIGNED FOR YOU TO SPEAK UP. AND I DON'T LIKE  
14 TO ENCOURAGE PEOPLE NOT TO SPEAK UP BY REWARDING THEM.

15 MY CLIENT WANTS TO DO THE RIGHT THING. SPEAK UP. AND  
16 WHEN PEOPLE DON'T SPEAK UP, WE WIND UP HERE. I DON'T LIKE TO  
17 REWARD THAT AND I AM GOING TO ASK YOU NOT TO REWARD THAT.

18 NOW, I THEN GET TO DID AN AGENT OR AN EMPLOYEE ENGAGE IN  
19 CONDUCT WITH MALICE, OPPRESSION, OR FRAUD?

20 WHO WAS THAT? WAS THAT THE PERSON WHO BROUGHT IN THE  
21 STICKER? WAS IT WITH MALICE? WE DON'T KNOW.

22 WAS IT WITH OPPRESSION? WE DON'T KNOW.

23 WAS IT JEFF FISCHER? I WANT YOU TO THINK ABOUT HIM  
24 SITTING ON THE STAND. WAS THERE ANYTHING THAT YOU THOUGHT WAS  
25 MALICIOUS ABOUT HIM? DID ANYBODY COME IN HERE AND TELL YOU



## CLOSING ARGUMENT - LAFAYETTE

1 THAT THEY THOUGHT HE WAS A MEAN, MALICIOUS PERSON? NO. NO.

2 CAMERON CURRAN TRIED TO HELP HER, FOLLOWED HER, DID  
3 EVERYTHING. DEANNA MARTINEZ TOLD US THAT. SOMETHING  
4 MALICIOUS THERE? NO. THERE WASN'T MALICIOUS.

5 SO, FIRST OF ALL, THERE WAS NO MALICE, THERE WAS NO  
6 OPPRESSION, AND THERE WAS NO FRAUD HERE BY CLEAR AND  
7 CONVINCING EVIDENCE. I AM HESITATING.

8 THEN ASSUME YOU FIND SOMETHING LIKE THAT, SO I WOULD ASK  
9 YOU TO PUT A "NO" THERE, AND I'LL GO HOME. OKAY? BUT EVEN IF  
10 YOU PUT A "YES" THERE, DID ONE OR MORE OFFICERS, DIRECTORS, OR  
11 MANAGING AGENTS KNOW OF THE CONDUCT AND AUTHORIZE OR RATIFY  
12 IT? AND THAT'S ABSOLUTELY A NO.

13 FIRST OF ALL, WE DON'T HAVE SUCH A PERSON. SECOND OF ALL,  
14 TO THE EXTENT THAT THEY SAY IT'S MIKE BECK, AS I'VE TOLD YOU  
15 OVER AND OVER AGAIN NOW, HE DIDN'T DO THAT.

16 SO I WILL SAY THIS: IF YOU WANT TO GIVE HER SOMETHING, IF  
17 THAT'S WHERE WE ARE, GIVE HER \$25,000.

18 3 AND 4, THOSE ARE NOS. AND THAT'S THE END OF THIS.

19 I APPRECIATE THE WORK THAT YOU GUYS HAVE DONE. I REALLY  
20 DO. I KNOW THIS IS HARD AND THIS IS DIFFICULT. IF I DO  
21 SOMETHING THAT OFFENDS ANYBODY, DON'T HOLD IT AGAINST MY  
22 CLIENT. SOMETIMES I CAN BE OVERZEALOUS, SOMETIMES I CAN BE  
23 EXUBERANT, AND SOMETIMES I CAN BE EXCITED ABOUT WHAT I DO.

24 BUT I STAND UP HERE NOT FOR ME, NOT FOR EQUILON, I STAND  
25 UP HERE FOR ALL OF THOSE GUYS AND WOMEN WHO CAME IN AND

1 TESTIFIED. THAT'S WHAT I DO. I WANT YOU GUYS TO THINK ABOUT  
2 THAT. THINK ABOUT THEM, TOO, AND GO BACK AND WORK AS HARD AS  
3 YOU WORKED BEFORE AND WORK HARD AGAIN, AND HOPEFULLY COME BACK  
4 WITH A RESULT THAT TALKS ABOUT DAMAGES AND A RESULT THAT SAYS  
5 THIS IS NOT A PUNITIVE DAMAGES CASE, AND WE ARE NOT GOING TO  
6 GO THERE.

7 THANK YOU.

8 **THE COURT:** IT IS PLAINTIFF'S BURDEN, REBUTTAL.

9 **REBUTTAL CLOSING ARGUMENT**

10 **MS. NUGENT:** WELL, SHELL KEEPS TRYING TO MISLEAD YOU.  
11 WE HEARD WHAT YOU -- WHAT WE MOST NEEDED FROM MS. NEWTON IS  
12 FOR HER TO SPEAK UP. WHAT WE MOST NEEDED FROM HER IS  
13 SOMETHING THAT WE DIDN'T GET. AND YOU KNOW WHAT WE HAVE NOT  
14 GOTTEN? NOT ONE OUNCE OF RESPONSIBILITY. NOT ONE FROM THAT  
15 COMPANY. NOT ONE.

16 YOU HAVE SPOKEN. YOU HAVE SPOKEN UP. MS. NEWTON SPOKE  
17 UP. MARCH, APRIL, MAY, JULY, ARE YOU KIDDING ME? HERE SHE IS  
18 TELLING THEM ALL THOSE TIMES, I FEEL SINGLED OUT, I FEEL LIKE  
19 I'M BEING TREATED UNFAIRLY, I FEEL LIKE I'M NOT BEING TREATED  
20 LIKE ANYONE ELSE. THOSE ARE EXACT WORDS FROM ALL THOSE  
21 EXHIBITS. EXACT WORDS. SHE DID EVERYTHING THAT SHE COULD DO.

22 AND ARE YOU TELLING ME THAT SHELL STILL REFUSES TO THIS  
23 DAY TO TAKE ANY RESPONSIBILITY FOR ANYTHING THAT HAPPENS AT  
24 THAT REFINERY? THAT'S WHAT THEY ARE TELLING YOU.

25 WE HEARD A MENTION OF MR. EKELEMU. HE SAID SOMETHING

1        REALLY IMPORTANT ON THE FIRST DAY, SOMETHING REALLY IMPORTANT.  
2        HE SAID THAT THIS REFINERY HAS NOT TAKEN THE STEPS TO PREPARE  
3        ITS WORKERS FOR THE CHANGES IN THE WORKFORCE, FOR THE  
4        DIVERSITY THAT'S HAPPENING. HE HAS BEEN THERE, HE'S SEEN IT,  
5        AND HE TOLD YOU THAT. AND THEY ARE STILL NOT HEARING OR  
6        TAKING ANY RESPONSIBILITY OR PREPARING THAT WORKFORCE AT ALL,  
7        AS YOU'VE HEARD, FOR THE CHANGES IN IT. AND IT IS YOUR  
8        RESPONSIBILITY TO MAKE THEM HEAR IT.

9            I KEEP HEARING ANOTHER LIE, TOO. NOTHING HAPPENED AFTER  
10        MAY 23RD. NOTHING HAPPENED AFTER MAY 23RD. JEFF FISCHER  
11        WHITED OUT THOSE SIGNATURES ON MAY 27TH. I JUST KEEP HEARING  
12        THAT. I JUST CAN'T LET THAT GO.

13            AND NOW WE'RE SUPPOSED TO BELIEVE THAT BECAUSE MS. NEWTON  
14        TOOK HER VACATION, SHE WASN'T HARMED? THAT WAS THE WEEK SHE  
15        WAS SUPPOSED TO GET MARRIED. YOU HEARD THAT. AFTER HER DAD  
16        DIED, SHE DIDN'T GET MARRIED THAT WEEK; SHE DID TAKE THE  
17        VACATION. AND NOW YOU ARE SUPPOSED TO HOLD THAT AGAINST HER  
18        FOR TAKING THAT TIME TO PUT HERSELF BACK TOGETHER? THAT'S  
19        WHAT YOU ARE HEARING.

20            AND YOU HEARD SOMETHING ELSE REALLY, REALLY IMPORTANT  
21        HERE. THINK ABOUT ALL THOSE GUYS AT THE REFINERY. PATRIK  
22        NEUMAN, HE'S ONE OF US.

23            WE ALSO KEEP HEARING ABOUT RAY JONES. HE TOLD YOU HE TOOK  
24        HER ASIDE IN THAT MEETING BECAUSE HE THOUGHT SHE WAS  
25        COMPLAINING ABOUT HARASSMENT. THAT'S WHY THERE WAS A BREAK.

## REBUTTAL CLOSING ARGUMENT - NUGENT

1 CHRISTINE LAYNE, HR, SHE HAS A MASTER'S IN HR. SHE TOLD  
2 YOU ABOUT A MASTER'S IN HR. SHE DIDN'T KNOW THAT?

3 ERIC PEREZ TOLD YOU HE KNEW THEY DIDN'T NEED NAMES. HE  
4 DIDN'T NEED EXACT NAMES, EVEN THOUGH HE KNEW WHO THEY WERE.  
5 HE TRIED TO TELL YOU, OH, I THOUGHT SHE WAS SAYING SHE WAS  
6 TREATED UNFAIRLY ABOUT WERE THE TARDIES. WHO WERE THE OTHER  
7 THREE PEOPLE IN THE CLASS? HE KNEW HE COULD HAVE GONE AND  
8 TALKED TO THOSE PEOPLE.

9 I WANT TO TALK A LITTLE BIT ABOUT MIKE BECK. HERE'S HIS  
10 EXACT TESTIMONY. HE IS A MANAGING AGENT. HE'S IN CHARGE OF  
11 THE WHOLE DEPARTMENT. HE WAS ASKED:

12 "WELL, DURING THE TIME PERIOD THAT YOU WERE THE  
13 PRODUCTION UNIT MANAGER FOR OPCEN, YOU ARE  
14 RESPONSIBLE FOR ALL THE OPERATIONS OF THE UNITS  
15 WITHIN THAT DEPARTMENT, CORRECT?

16 "CORRECT.

17 "YOU ARE RESPONSIBLE FOR ALL OF THE EMPLOYEES IN THE  
18 OPCEN DEPARTMENT, CORRECT?

19 "CORRECT.

20 "YOU WERE RESPONSIBLE FOR ALL OF THE PROJECTS IN THE  
21 OPCEN DEPARTMENT?

22 "CORRECT.

23 "YOU WERE RESPONSIBLE FOR THE TURNAROUND, CORRECT?

24 "CORRECT.

25 "YOU WERE RESPONSIBLE FOR THE CHANGES THAT WENT ON ON

1 OPCEN?

2 "YES.

3 "AND THEN, OF COURSE, WHEN IT CAME TO OPCEN, THE BUCK  
4 STOPS WITH YOU?

5 "CORRECT.

6 "DURING THE TIME YOU WERE THE PRODUCTION UNIT  
7 MANAGER, YOU HAD THE AUTHORITY TO MAKE DECISIONS TO  
8 HIRE AND FIRE, CORRECT?

9 "CORRECT."

10 HE ALSO APPARENTLY HAD AUTHORITY TO GO AGAINST WHAT  
11 SHELL'S WRITTEN POLICIES WERE BY NOT ENFORCING THEM. THAT'S A  
12 POLICY IN ITSELF. HE KNEW HE COULD GO AGAINST THEM, SO HE  
13 JUST DIDN'T DO ANYTHING. THE POLICY IS TO INVESTIGATE; IF  
14 THEY DON'T, WHO GETS FINAL SAY ON THAT? MIKE BECK.

15 GOING BACK FOR A SECOND TO WANTING THIS INFORMATION FROM  
16 HER AND NOT GETTING THIS INFORMATION FROM HER, THAT IS JUST  
17 NOT CREDIBLE. IT'S JUST NOT. MS. NEWTON SAID MANY TIMES WHO  
18 HER THREE CLASSMATES WERE. YEAH, SHE WANTED TO ASK THEIR  
19 PERMISSION. MANAGEMENT DOESN'T NEED THEIR PERMISSION TO TALK  
20 TO THEM. SHE DIDN'T WANT TO GET 'EM IN TROUBLE. SO WHAT?  
21 SHE COMPLAINED MANY OTHER TIMES. MANY OTHER TIMES.

22 SHELL'S COUNSEL SHOWED YOU SOME EXHIBITS. THERE'S ALSO AN  
23 EXHIBIT 45 WHERE IT SHOWS THAT MR. BECK KNEW PLAINTIFF WAS  
24 CONCERNED ABOUT MR. FISCHER AND RETALIATION BY HIM AGAINST HER  
25 CLASSMATES. SAME EMAIL WHERE NEWTON SAYS THEY NEED TO

1 INVESTIGATE.

2 OKAY. YOU'VE HEARD A LITTLE BIT ABOUT AN AMOUNT. AGAIN,  
3 I SAID WE TRUST YOU TO COME UP WITH AN AMOUNT. AND YOU KNOW  
4 NOW ECONOMIC DAMAGES ARE NOT IN THE CASE. THAT IS USUALLY  
5 SOME WAY TO... TO PEG SOME AMOUNT. AGAIN, WE ARE GOING TO  
6 TRUST YOU TO COME UP WITH IT.

7 THIS IS THE ONLY WAY THAT YOU ARE GOING TO COMPENSATE  
8 MS. NEWTON FOR GOING INTO THAT REFINERY EVERY DAY, INTO AN  
9 ENVIRONMENT WHERE SHE FELT INTIMIDATED AND THREATENED FROM THE  
10 BEGINNING, AND SHE KEPT TRYING TO WORK HARD, SHE CAUGHT UP ON  
11 HER OWN AFTER HER FATHER'S DEATH. SHE COMPLAINS AND COMPLAINS  
12 AND COMPLAINS, AND THEN THAT STICKER ON HER DESK. SO YOU NEED  
13 TO COMPENSATE HER FOR THAT. YOU NEED TO FINALLY, FINALLY,  
14 FINALLY MAKE SHELL TAKE RESPONSIBILITY.

15 AND SO WHETHER THAT IS SOMETHING IN THE NEIGHBORHOOD OF  
16 WHAT HER PAST LOST WAGES ARE, \$250,000, OR DOUBLE THAT,  
17 \$500,000, OR MAYBE YOU THINK SHELL NEEDS TO PAY MORE TO  
18 COMPENSATE HER FOR THAT FOR GOING THROUGH THAT, OR LESS, IT'S  
19 UP TO YOU. AND WE TRUST YOU. AND ONCE AGAIN, THE CASE IS IN  
20 YOUR HANDS.

21 THANK YOU.

22 **THE COURT:** THANK YOU.

23 ALL RIGHT. LADIES AND GENTLEMEN, IF THE COURTROOM DEPUTY  
24 WILL PASS OUT THESE INSTRUCTIONS, I JUST WANT TO FLIP THROUGH  
25 THEM WITH YOU AGAIN SO THAT I DON'T HAVE TO -- I'M NOT GOING

1 TO REREAD THEM TO YOU OMITTING CERTAIN MATERIALS, BUT I DO  
2 WANT YOU TO FLIP THROUGH THEM WITH YOU.

3 (DOCUMENTS HANDED TO COUNSEL AND JURY.)

4 **THE COURT:** ALL RIGHT. SO YOU HAVE YOUR COPY THERE.  
5 SO AS YOU CAN SEE, THE INTRODUCTION IS -- TO DAMAGES IS THE  
6 SAME ABOUT HAVING ACKNOWLEDGED YOUR DECISION TO AWARD DAMAGES  
7 AND THE ATTORNEYS' ARGUMENTS ARE NOT DAMAGES AND THE  
8 ATTORNEYS' FEES AND EXPENSES DO NOT -- ARE NOT TO BE  
9 CONSIDERED.

10 THERE ARE STILL TWO LEGAL THEORIES, RIGHT, BECAUSE YOU  
11 FOUND ON TWO CLAIMS, BUT THE ONLY AVAILABLE DAMAGES, AS THE  
12 ATTORNEYS HAVE ARGUED, ARE FOR EMOTIONAL DISTRESS PAST AND  
13 FUTURE. SO EVERYTHING I SAID ABOUT THE ECONOMIC DAMAGES, I'VE  
14 TAKEN IT OUT. IT DOESN'T APPLY.

15 THE AVOIDABLE CONSEQUENCES, WHICH IS THE NEXT PAGE, STILL  
16 APPLIES.

17 AND THEN I READ YOU A FULL PAGE ABOUT MITIGATION OF  
18 DAMAGES. THAT ALL RELATED TO ECONOMICS. YOU DON'T SEE THAT  
19 IN THERE BECAUSE IT DOESN'T APPLY. ALL RIGHT?

20 SO THEN THE FINAL PAGES RELATE TO THE PUNITIVES. I THINK  
21 THE ATTORNEYS HAVE DONE A GREAT JOB OF FOCUSING ON THE LAW  
22 THAT APPLIES, AND I DON'T THINK THAT ANYBODY WANTS ME TO  
23 REREAD THESE, ESPECIALLY BECAUSE YOU PROBABLY DON'T REMEMBER  
24 EXACTLY WHAT I SAID AND NOW YOU HAVE THEM IN WRITING IN FRONT  
25 OF YOU.

1 ARE THERE ANY QUESTIONS?

2 YES, MA'AM.

3 **JUROR:** IF WE WON'T BE FINISHED BY THE END OF THE  
4 DAY, WILL WE COME BACK TOMORROW?

5 **THE COURT:** I CAN'T TELL YOU. I DON'T KNOW HOW LONG  
6 YOU'RE GOING TO DELIBERATE. SO JUST KEEP PLUGGING UNTIL WE  
7 ARE ALL DONE, OKAY? I WILL BE HERE TOMORROW IF I HAVE TO BE.

8 ALL RIGHT. ANY OTHER QUESTIONS? NO?

9 ALL RIGHT. THEN WE WILL WAIT TO HEAR BACK FROM YOU.

10 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

11 **THE COURT:** I DIDN'T WANT THERE TO BE ANY CONFUSION,  
12 SO I'M GOING TO GIVE THE COURTROOM DEPUTY NOW THE VERDICT  
13 FORM. SO LET'S GIVE ONE TO EACH OF THE LAWYERS AND ONE TO THE  
14 COURT REPORTER.

15 THEN IF YOU HAVE THE RED ENVELOPE.

16 **THE CLERK:** I DO.

17 **THE COURT:** I ALMOST CHANGED THE COLOR OF THAT  
18 ENVELOPE AFTER THE MESS UP WITH THE ACADEMY AWARDS.

19 ALL RIGHT. SO THERE IS THE ORIGINAL AND HERE IS ONE COPY  
20 FOR EACH OF THEM.

21 (DOCUMENTS HANDED TO COUNSEL.)

22 **THE COURT:** ALL RIGHT. FOLKS WE WILL STAND IN RECESS  
23 UNTIL --

24 **MS. SMALLETS:** YOUR HONOR, CAN I DRAW YOUR ATTENTION  
25 TO ONE CASE ON THE ISSUE OF THE ECONOMIC DAMAGES?



1           **THE COURT:** I THINK WITH RESPECT TO THAT ISSUE, THE  
2 SHIP HAS SAILED. ANYTHING THAT WE WANT -- THAT YOU THINK I  
3 NEED TO REDO AFTER ALL OF THIS IS DONE, WILL BE DONE ON  
4 POST-TRIAL MOTIONS. I AM NOT GOING TO THINK ABOUT -- I'M NOT  
5 GOING TO THINK ABOUT REDOING IT AT THIS POINT, MS. SMALLETS.

6           **MS. SMALLETS:** OKAY. THERE'S CASE LAW THAT INDICATES  
7 THAT ECONOMIC DAMAGES ARE RECOVERABLE UNDER THESE  
8 CIRCUMSTANCES.

9           **THE COURT:** WELL, THAT WILL BE A POST-TRIAL ISSUE.

10          **MS. SMALLETS:** THANK YOU, YOUR HONOR.

11          **THE COURT:** ALL RIGHT. WE WILL STAND IN RECESS UNTIL  
12 THEY COME BACK.

13          I WOULD SUGGEST THAT PERHAPS YOU STAY AT THE ATTORNEY  
14 LOUNGE OR SOMEWHERE CLOSE. I DON'T KNOW HOW LONG THIS WILL  
15 TAKE THEM. OKAY?

16          **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

17          **THE COURT:** THEN WITH RESPECT TO PUNITIVES, IF WE GET  
18 THERE, NO MORE THAN TEN MINUTES OF ARGUMENT FOR EACH SIDE.

19          WE WILL STAND IN RECESS.

20          (RECESS TAKEN AT 2:33 P.M.; RESUMED AT 3:00 O'CLOCK P.M.)

21          (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

22          **THE COURT:** ALL RIGHT. LET'S GO ON THE RECORD. THE  
23 RECORD WILL REFLECT THAT I HAVE THE LAWYERS BACK.

24          I DO WANT TO TALK ABOUT THE NEXT PHASE IN CASE I GET A  
25 VERDICT BACK FROM THE JURY THAT FINDS A LIABILITY FINDING ON

1 PUNITIVES.

2 FIRST OF ALL, WHAT EVIDENCE DO YOU WANT TO PUT IN, CAN  
3 THERE BE STIPULATIONS IN THIS REGARD TO FACILITATE AND  
4 STREAMLINE THIS PHASE? WE DO HAVE THE FINANCIALS WHICH HAVE  
5 BEEN LODGED WITH THE COURT.

6 DO WE NEED LIVE TESTIMONY OR CAN THERE BE STIPULATIONS?

7 **MR. LAFAYETTE:** YOUR HONOR, IN THE UNDER SEAL  
8 DOCUMENTS YOU HAVE, THERE IS A DECLARATION AFFIRMING THAT  
9 THOSE ARE THE FINANCIALS. I THINK WE CAN JUST STIPULATE THAT  
10 THAT'S WHAT IT IS.

11 **MS. NUGENT:** YEAH. I HAVEN'T SEEN THEM, BUT ASSUMING  
12 THEY ARE WHAT THEY NORMALLY LOOK LIKE, I DON'T THINK WE ARE  
13 GOING TO NEED ANY LIVE TESTIMONY. I HAVE ASKED FOR AN  
14 ELECTRONIC COPY OF THEM SO WE CAN BE PREPARED AND JUST ARGUE  
15 OFF OF WHAT THEY SAY.

16 **THE COURT:** OKAY. ANY OBJECTION TO ME OPENING UP  
17 THIS PACKET?

18 **MR. LAFAYETTE:** NO, YOUR HONOR.

19 **MS. NUGENT:** NO, YOUR HONOR.

20 **THE COURT:** I DIDN'T KNOW THAT YOU HAVE A BASIS TO  
21 OBJECT.

22 **MS. NUGENT:** THAT'S TRUE. NO STANDING FOR THAT.

23 **THE COURT:** SO, MR. LAFAYETTE, I'VE OPENED IT UP. I  
24 DON'T SEE A DECLARATION. I SEE THREE COPIES OF WHAT APPEAR TO  
25 BE THE EXACT SAME THING, WHICH IS THE CONSOLIDATED FINANCIAL

1 STATEMENTS.

2 **MR. LAFAYETTE:** I HAVE IT HERE. I CAN PUT IT ON THE  
3 SCREEN FOR YOUR HONOR.

4 **THE COURT:** OKAY.

5 **MS. NUGENT:** EXCUSE ME.

6 **MR. LAFAYETTE:** I WAS JUST GOING IT TO USE THIS.

7 (PAUSE IN THE PROCEEDINGS.)

8 (DISPLAYED ON SCREEN.)

9 **THE COURT:** ALL RIGHT. THE NEXT PAGE. ALL RIGHT.

10 ANY OBJECTION TO ME HANDING A COPY OF THESE TO THE  
11 PLAINTIFFS FOR THEIR SOLE PURPOSE OF THEIR REVIEW AND  
12 PREPARATION FOR THE NEXT PHASE, TO THE EXTENT THAT IT IS  
13 APPROPRIATE?

14 IF IT IS ULTIMATELY NOT, THEY WOULD BE RETURNED TO THE  
15 COURT AND I WOULD ULTIMATELY RETURN THEM TO YOU. THESE  
16 FINANCIAL STATEMENTS WOULD ONLY BE GIVEN UNDER THE ORDER THAT  
17 THEY CAN BE USED FOR NO OTHER PURPOSE AND THEY CANNOT BE  
18 COPIED OR OTHERWISE DISSEMINATED BEYOND THE NEED TO USE THEM  
19 FOR THIS CASE.

20 **MR. LAFAYETTE:** THAT'S FINE.

21 **THE COURT:** ANY OBJECTION?

22 **MR. LAFAYETTE:** NO, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. SO I WILL KEEP A COPY.

24 MS. NUGENT, THERE IS A COPY FOR YOU. MR. LAFAYETTE, JUST A  
25 COPY SO YOU KNOW WHAT IT IS WE HAVE.

1 I NEED YOU TO EMAIL THAT DECLARATION TO ME.

2 MS. NUGENT: I'LL DO IT.

3 THE COURT: AND WE NEED THE ORIGINAL. I DON'T KNOW  
4 WHERE IT IS.

5 (DOCUMENT HANDED TO COURT AND COUNSEL.)

6 THE COURT: IS THERE A STIPULATION THAT THE COURT CAN  
7 ADMIT THE DECLARATION AND THE EXHIBIT AS EVIDENCE FOR THE JURY  
8 TO CONSIDER?

9 MS. NUGENT: YES, YOUR HONOR.

10 MR. LAFAYETTE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. GIVEN THAT, IS THERE A  
12 STIPULATION THAT NO FURTHER EVIDENCE IS NEEDED?

13 MS. NUGENT: I HAVEN'T LOOKED AT IT YET, SO I  
14 DON'T -- I NOTICE THERE IS NO AUDITED FINANCIAL STATEMENT FOR  
15 EQUILON. SO WITHOUT LOOKING AT IT, I DON'T KNOW.

16 THE COURT: YOU UNDERSTAND WHAT THE DECLARATION SAYS?

17 MS. NUGENT: YES.

18 THE COURT: THAT THERE IS -- THAT IT ONLY COMES IN --  
19 THAT THERE IS NO SEPARATE FINANCIAL, THAT IT IS PART OF THE  
20 SHELL'S DISCLOSURES.

21 MS. NUGENT: YES.

22 THE COURT: SO I WILL GIVE YOU TIME TO LOOK AT IT.  
23 AND WHEN YOU'VE HAD A CHANCE TO LOOK AT IT, LET ME KNOW.

24 (PAUSE IN THE PROCEEDINGS.)

25 (DOCUMENT HANDED TO COURT AND COUNSEL.)

1           **MR. LAFAYETTE:** YOUR HONOR, I THINK I NEED YOUR EMAIL  
2 ADDRESS.

3           **THE COURT:** JUST SEND IT TO CHAMBERS. NOT TO ME  
4 SPECIFICALLY.

5           I SAW THAT MS. LYONS PASSED THESE OUT, BUT WHERE IS THE  
6 ORIGINAL TO BE FILED?

7           **MS. LYONS:** WE RECEIVED IT BY PDF, YOUR HONOR, OVER  
8 THE INTERNET.

9                               (PAUSE IN THE PROCEEDINGS.)

10          **THE COURT:** SO, MR. LAFAYETTE, I DON'T SEE A SINGLE  
11 REFERENCE TO EQUILON ENTERPRISES IN THIS DOCUMENT. SO I TAKE  
12 IT YOU ARE WAIVING THE ARGUMENT THAT SOMETHING OTHER THAN THE  
13 FULL VALUE OF SHELL SHOULD BE ARGUED FOR PUNITIVES PURPOSES?

14          IN FACT, THE WORD "EQUILON", FROM WHAT I CAN TELL, MY  
15 QUICK REVIEW, NEVER APPEARS.

16          **MR. LAFAYETTE:** I THINK YOU'RE RIGHT IT DOESN'T  
17 APPEAR. BUT THIS IS ALL I'VE GOT. SO AT THE END OF THE DAY,  
18 THE ONLY THING I HAVE IS THIS CONSOLIDATED FINANCIAL  
19 STATEMENT.

20          **THE COURT:** SO THE WAIVER IS -- ARE YOU WAIVING?

21          **MR. LAFAYETTE:** "WAIVER" IS A STRONG WORD, YOUR  
22 HONOR --

23          **THE COURT:** WELL, WE ARE IN TRIAL. FIRST OF ALL, WE  
24 ARE IN TRIAL. SECOND OF ALL, YOU WERE UNDER A FEDERAL COURT  
25 ORDER TO HAVE A PERSON WITH INFORMATION AND KNOWLEDGE TO

1 DISCUSS THE FINANCIAL STATUS OF THE RELEVANT PARTY, NAMELY,  
2 YOU, SHELL, EQUILON AVAILABLE ON ONE HOUR'S NOTICE FROM WHEN  
3 THE JURY DELIBERATIONS BEGAN, WHICH WAS LAST MONDAY. SO YOU  
4 HAVE BEEN ON NOTICE. THIS IS COURT ORDER DOCKET 201.

5 AND YOU WERE ORDERED TO FILE WITH THE COURT AND LODGE, NOT  
6 FILE BUT LODGE WITH THE COURT ALL OF THE DEFENDANT'S FINANCIAL  
7 INFORMATION. THIS IS WHAT YOU'VE GIVEN ME.

8 SO, IN MY VIEW, GIVEN THAT THE WORD DOESN'T EVEN SHOW UP,  
9 YOU HAVE WAIVED UNLESS THERE IS SOME OTHER REASON TO THINK  
10 OTHERWISE.

11 **MR. LAFAYETTE:** ALL I CAN TELL YOU, YOUR HONOR, IS  
12 THIS: I HAVE NOTHING ELSE. AND IF THAT MEANS THAT I HAVE  
13 WAIVED, THEN I'VE WAIVED. BUT I HAVE NOTHING ELSE TO GIVE,  
14 YOUR HONOR. THAT'S ALL I'M SAYING.

15 **THE COURT:** ALL RIGHT. THE COURT DEEMS IT WAIVED.

16 **MS. NUGENT:** THIS IS THE INFORMATION WE HAVE, AND WE  
17 WILL STIPULATE THAT WE WILL ARGUE FROM THIS.

18 **THE COURT:** OKAY.

19 GOOD ENOUGH. WE WILL STAND IN RECESS UNTIL WE HEAR FROM  
20 THE JURY.

21 (RECESS TAKEN AT 3:13 P.M.; RESUMED AT 4:10 P.M.)

22 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

23 **THE COURT:** WE RECEIVED -- WE ARE BACK ON THE RECORD.  
24 THE RECORD WILL REFLECT THAT THE PARTIES ARE PRESENT.

25 WE RECEIVED THE FOLLOWING QUESTION AT 4:00 O'CLOCK:

1 "WHAT CAN WE EXPECT WILL HAPPEN IF WE CANNOT AGREE ON AN  
2 AMOUNT NOW OR FIVE DAYS FROM NOW?"

3 THOUGHTS? START WITH THE PLAINTIFF.

4 **MS. NUGENT:** I THINK THEY NEED TO KEEP TRYING.

5 **MR. LAFAYETTE:** I COULDN'T HEAR, I'M SORRY.

6 **MS. NUGENT:** I SAID I THINK THAT THEY NEED TO KEEP  
7 TRYING.

8 **MR. LAFAYETTE:** IF I THINK I UNDERSTAND IT, THEN IF  
9 THEY DON'T REACH A NUMBER, THEN THERE'S PROBABLY A MISTRIAL.  
10 BUT I HAVEN'T BEEN IN THIS POSITION BEFORE, YOUR HONOR, SO I  
11 PROBABLY NEED TO TAKE A LOOK.

12 BUT IF THEY ARE ASKING FOR A DIRECTIVE, I -- THERE'S A  
13 SPECULATIVE PART TO THE QUESTION, BUT I THINK THAT WHAT WE  
14 TELL THEM TO TRY, AND IF THEY CAN'T REACH A DECISION, THEN I  
15 THINK THERE IS A CHARGE THAT'S GIVEN. I'VE NEVER HAVE HAD  
16 TO -- AND THERE'S A CHARGE THAT'S GIVEN, BUT THAT'S ALL I  
17 THINK I KNOW OF.

18 **THE COURT:** WHAT I COULD DO IS -- WELL, IT MAY BE  
19 THAT I NEED TO TELL THEM TO GO HOME AND REST AND COME BACK AND  
20 TAKE A FRESH LOOK AT IT IN THE MORNING.

21 THERE IS THE INSTRUCTION 3.7 WHICH JUST REMINDS THEM  
22 THAT -- OF THEIR DUTY TO -- YOU CAN ALL READ IT -- BUT TO TRY  
23 TO REACH A VERDICT, BUT THAT THEY SHOULD ONLY DO SO AFTER, YOU  
24 KNOW, CONSCIENTIOUSLY THINKING ABOUT THE OTHERS. AND IT ALSO  
25 TELLS THEM TO PERHAPS QUESTION THE CORRECTNESS OF YOUR PRESENT

1 POSITION.

2 BUT THEY HAVE BEEN WORKING HARD ALL DAY AND THEY ARE  
3 PROBABLY TIRED. AND IT MAY BE WORTHWHILE FOR THEM TO GO AND  
4 REST AND COME BACK, AND THEN THAT WILL GIVE YOU AN OPPORTUNITY  
5 OVER THE EVENING TO THINK ABOUT IT.

6 THE -- MY INSTINCT IS TO SAY THAT THERE WOULD BE A  
7 MISTRIAL BECAUSE ALL OF THE ELEMENTS HAVEN'T -- THEY CAN'T  
8 RESOLVE ALL OF THE ELEMENTS. AND CERTAINLY WE ARE AT THE  
9 POINT OF ONLY EMOTIONAL DISTRESS DAMAGES, THEY COULDN'T HAVE  
10 SOME OTHER JURY DECIDE THAT TOPIC WITHOUT RE-LISTENING TO ALL  
11 OF THE EVIDENCE AGAIN. SO I THINK I WOULD HAVE TO DECLARE A  
12 MISTRIAL, BUT I DON'T KNOW THAT I AM INCLINED TO TELL THEM  
13 THAT RIGHT NOW.

14 I DID INSTRUCT THEM ON THAT TOPIC ORIGINALLY, SO IT'S IN  
15 THEIR INSTRUCTIONS THAT IF THEY DON'T AGREE, I THINK THERE IS  
16 A REFERENCE TO A MISTRIAL, BUT I AM NOT INCLINED TO DO THAT  
17 RIGHT THIS MINUTE.

18 **MS. NUGENT:** I WOULD AGREE.

19 **MR. LAFAYETTE:** THAT'S FINE, YOUR HONOR.

20 BEFORE WE BRING THEM OUT, I HAVE A DOCTOR'S APPOINTMENT ON  
21 MY KNEE AT 9:30. I AM ASSUMING THAT'S OUT NOW.

22 **THE COURT:** I WOULD THINK SO.

23 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

24 **THE COURT:** DO YOU WANT ME TO READ TO THEM 3.7, WHICH  
25 IS BASICALLY, YOU KNOW, GO BACK AND TRY AGAIN TO REMIND



1       THEM -- IT ESSENTIALLY REMINDS THEM OF THEIR DUTY, OR JUST  
2       SAY, LOOK, YOU'VE BEEN WORKING REALLY HARD, GO HOME, REST --

3               **MR. LAFAYETTE:**   I WOULD GIVE THEM THAT ONE FIRST,  
4       YOUR HONOR.

5               **MS. NUGENT:**   YEAH, YOU CAN READ 3.7.   I THINK THEY  
6       KNOW THAT, THOUGH.

7               **THE COURT:**   YOU'RE SAYING NOT TO DO 3.7?

8               **MR. LAFAYETTE:**   I WOULD SAY NOT TO DO --

9               **MS. NUGENT:**   OH, GREAT.   LET THEM GO HOME.

10              **MR. LAFAYETTE:**   SO SAY THAT.   LET THEM GO HOME.

11              **THE COURT:**   LET'S BRING THEM ON IN.

12              **THE CLERK:**   ALL RIGHT.

13              (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

14              **THE COURT:**   WE ARE BACK ON THE RECORD.   YOU MAY BE  
15       SEATED.

16              WELCOME BACK.   YOU ALL LOOK EXHAUSTED TO ME.   AND THAT  
17       TELLS ME, AS I KNOW IS THE CASE, YOU HAVE BEEN WORKING REALLY  
18       HARD.   I THINK YOU SHOULD ALL GO HOME AND REST AND COME BACK  
19       IN THE MORNING AND SEE IF YOU CAN FIGURE IT OUT WITH A GOOD  
20       NIGHT'S SLEEP.   THAT'S WHAT I THINK.

21              I AM NOT GOING TO ANSWER THIS QUESTION RIGHT NOW, BUT I  
22       THINK YOU'VE PUT A LOT OF EFFORT INTO THIS CASE, THE PARTIES  
23       HAVE PUT A LOT OF EFFORT INTO THIS CASE, GO HOME AND REST AND  
24       COME BACK IN THE MORNING.

25              ANY QUESTIONS OR CONCERNS?   NO?

1           **JUROR:**   WOULD YOU OBJECT IF... WE WERE WAITING FOR  
2           THIS ANSWER, WOULD YOU OBJECT IF WE WENT IN TO DECIDE TONIGHT  
3           OR NOT?

4           **THE COURT:**   YOU CAN STAY HERE AS LONG AS YOU WANT.  
5           AS LONG AS YOU WANT.

6           **JUROR:**   MAY WE HAVE ANOTHER 15 MINUTES?

7           **THE COURT:**   YOU CAN HAVE AS LONG AS YOU WANT.   I MEAN  
8           I KNOW I GAVE YOU GUYS A DEADLINE, BUT THIS IS FEDERAL COURT.  
9           AND IN FEDERAL COURT, I CAN KEEP PEOPLE HERE UNTIL 6:00, 7:00,  
10          8:00 O'CLOCK AT NIGHT IF I WANT TO.   I DON'T THINK I WANT TO  
11          DO THAT, BUT YOU CAN HAVE AS MUCH TIME AS YOU WANT.

12          YES, MA'AM.

13          **JUROR:**   WHAT TIME DOES THE PARKING CLOSE?

14          **THE COURT:**   I THINK IT CLOSES LIKE AT MIDNIGHT.   I  
15          DON'T KNOW IF IT EVER CLOSES.   THAT WOULD BE A REAL PROBLEM  
16          FOR MY LAW CLERKS GIVEN THAT THEY ARE HERE PRETTY LATE AT  
17          NIGHT.

18          **JUROR:**   OKAY.   THANK YOU.

19          **THE COURT:**   I'LL SEND IN SOME CANDY, HOW ABOUT?   ALL  
20          RIGHT.   I'LL SEND IN SOME CANDY.   WE WILL WAIT FOR YOU AS LONG  
21          AS YOU NEED US TO.   OKAY.

22          GARAGE CLOSES AT 11 P.M. I'M TOLD.

23          **JUROR:**   THANK YOU.

24          (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

25          **THE COURT:**   OKAY.   THE RECORD WILL REFLECT THAT THEY

1 HAVE LEFT.

2 HERE'S THE THING FOLKS: IF THEY COME BACK, THERE IS ONE  
3 MORE PHASE. AND GIVEN HOW TIRED THESE FOLKS LOOK, I THINK I  
4 MAY ONLY GIVE YOU FIVE MINUTES TO CLOSE ON PUNITIVES.

5 **MS. NUGENT:** THAT SOUNDS GOOD. ABSOLUTELY.

6 **THE COURT:** I JUST, YOU KNOW. ANYWAY. THINK ABOUT  
7 IT. WE WILL STAND IN RECESS UNTIL WE HEAR BACK FROM THEM.

8 (JURY LEAVES AT 4:15 P.M.)

9 (PROCEEDINGS ADJOURNED AT 4:20 P.M.)

10  
11  
12 **CERTIFICATE OF REPORTER**

13 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
14 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
15 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
16 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

17  
18 

19 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

20 WEDNESDAY, DECEMBER 19, 2018  
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22  
23  
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25